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2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

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5 THABO SEFOLOSHA,

6 Plaintiff, Action No. 1

Case No.

7 -against- 16 Civ. 2564(JMF)

8 P.O. JOHN PAUL GIACONA, P.O. JORDAN ROSSI,
9 P.O. RICHARD CASTER, P.O. DANIEL DONGVORT,
P.O. MICHAEL O'SULLIVAN, and THE CITY OF
NEW YORK,

10

Defendants.

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(Caption continued on next page.)

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14 EXAMINATION BEFORE TRIAL of the
15 Defendant, P.O. DANIEL DONGVORT, pursuant to
16 Notice, held at the law offices of
17 JAROSLAWICZ & JAROS, PLLC, 225 Broadway,
18 24th floor, New York, New York, on January
19 5, 2017, commencing at 10:23 A.M., before
20 MEDEA EDER, a shorthand reporter and Notary
21 Public within and for the State of New York.

22

23 REINIG REPORTING, INC.
24 192 Lexington Avenue
Suite 805
New York, New York 10016
25 212-684-7298

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 PERO ANTIC,

5 Plaintiff, Action No. 2

6 -against- Case No.
16 Civ. 2425
7 (JMF)

8 THE CITY OF NEW YORK, POLICE OFFICER
9 RICHARD CASTER, Individually and in
10 his capacity as a member of the New
11 York City Police Department, POLICE
12 OFFICER PAUL GIACONA, Individually
13 and in his capacity as a member of
14 the New York City Police Department,
15 POLICE OFFICER DANIEL DONGVORT,
16 Individually and in his capacity as
17 a member of the New York City Police
Department, POLICE OFFICER MICHAEL
O'SULLIVAN, Individually and in his
capacity as a member of the New York
City Police Department, and JOHN
and JANE DOES, said names being
fictitious and intended to represent
individual officers, members, agents,
servants and/or employees of the New
York City Police Department in their
individual and official capacity,

18 Defendants.

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1 Daniel Dongvort

2 Q. Did you walk past the car that you
3 had opened the door of?

4 A. Yes, ma'am. Maybe roughly a car
5 length, maybe a car length-and-a-half,
6 something like that.

7 Q. Did the down on his luck guy tell
8 you he didn't want to leave?

9 A. No.

10 Q. Did the down on his luck guy say
11 anything?

12 A. Nothing that I recall.

13 Q. Did you hear the down on his luck
14 guy say any words to Mr. Sefolosha?

15 A. Not that I recall.

16 Q. Did you hear Mr. Sefolosha say any
17 words to the down on his luck guy?

18 A. Not that I recall.

19 Q. As you were escorting the down on
20 his luck guy north on Tenth Avenue, what is the
21 next thing that happened?

22 A. I noticed out of the corner of my
23 guy Mr. Sefolosha kind of stumbling, where I
24 was standing. And I also noticed Officer
25 Caster.

1 Daniel Dongvort

2 Q. You said that you were escorting
3 the down on his luck guy north on Tenth Avenue.
4 Where was your head, where were you looking
5 when you were escorting him north on Tenth
6 Avenue? Were you looking where you were going?

7 A. I don't know where I was looking
8 at that moment.

9 Q. With which eye did you see
10 Mr. Sefolosha?

11 A. My left eye.

12 Q. You're on the sidewalk at this
13 point?

14 A. Yes, ma'am.

15 Q. And you're a car length or a car
16 length-and-a-half away from where you were when
17 you first encountered the down on his luck guy?

18 A. Yes, ma'am.

19 Q. Out of the left corner of your
20 eye, what exactly did you see?

21 A. Mr. Sefolosha stumbling.

22 Q. Stumbling, okay. What do you
23 mean, he was stumbling?

24 A. He wasn't standing still. I'm not
25 sure.

1 Daniel Dongvort

2 Q. Was he tripping on something? Was
3 he falling?

4 A. I don't know what caused him to
5 stumble.

6 Q. Where was he when you saw him
7 stumbling?

8 A. West of where I was. Maybe two,
9 three feet behind me -- no, maybe not even two
10 feet, maybe a foot behind me. But west of
11 where I was.

12 Q. And you were able to see him out
13 of your left eye? You have amazing vision out
14 of the corner of your left eye.

15 MR. FRANCOLLA: Objection.

16 A. At no point in time is my head
17 fixated in one position. That's what I'm
18 trying to get at. So if by chance my head
19 moved to the left and I was facing a little bit
20 northwest of where I was facing initially, then
21 maybe that's the case. My head is never
22 fixated on one spot. You need to constantly be
23 able to see what's going on around you for
24 safety purposes.

25 Q. Before you started escorting the

1 Daniel Dongvort

2 down on his luck guy up north on Tenth Avenue,
3 did you say anything to Mr. Sefolosha before
4 you left that area of the car?

5 A. I don't believe so.

6 Q. Did you give him any final
7 instructions like, "Get in there, get on out of
8 here, get in the car, go to the hotel, do
9 whatever you're going to do"?

10 A. I don't know.

11 Q. You did not say goodbye to
12 Mr. Sefolosha?

13 A. I did not say goodbye to him.

14 Q. Do you recall saying any words to
15 Mr. Sefolosha before you left the immediate
16 vicinity of the car to escort the down on his
17 luck guy north on Tenth Avenue?

18 A. Immediately before I walked away,
19 no.

20 Q. And you said as you took whatever
21 steps you took, then you saw Mr. Sefolosha
22 stumbling. Was he stumbling on the sidewalk?

23 A. Yes. He was stumbling on the
24 sidewalk at that point.

25 Q. Did that bring your attention back

1 Daniel Dongvort

2 over to Mr. Sefolosha?

3 A. Yes.

4 Q. What did you see when your

5 attention was brought back over to

6 Mr. Sefolosha?

7 A. I saw Officer Caster attempting to

8 place Mr. Sefolosha under arrest.

9 Q. Do you know why Officer Caster was

10 trying to place Mr. Sefolosha under arrest?

11 A. Are you asking about today?

12 Q. Let's talk about that moment: Do

13 you know why what was happening was happening?

14 A. I didn't know at that moment.

15 Q. Did you see Officer Caster place

16 his hands on Mr. Sefolosha at that point?

17 A. Yes.

18 Q. Before you saw Mr. Sefolosha

19 stumbling -- as you say, out of the corner of

20 your left eye -- did you hear any voices or any

21 shouting or anything by Officer Caster or

22 Mr. Sefolosha or anyone else?

23 A. Not that I can recall, no, ma'am.

24 Q. What did you see Officer Caster do

25 at that moment when you saw, out of the left

1 Daniel Dongvort

2 corner of your eye, Mr. Sefolosha stumbling?

3 A. He seemed to be stumbling as well.

4 Q. Did you use the word "stumbling"
5 when you testified in front of the CCRB?

6 A. I don't recall.

7 Q. You read your testimonies in
8 preparation for today; right?

9 A. I did, yes.

10 Q. You didn't see the word
11 "Stumbling"; right?

12 A. I don't recall.

13 Q. You're saying that now;
14 "Stumbling"?

15 A. That's the way I worded it today.
16 If I worded it differently, I apologize.

17 Q. Well, it's not a matter of
18 apologizing. I'm just trying to figure out
19 what it is you remember and what happened.
20 When you say the word "stumbling," it gives an
21 indication of someone tripping over something.
22 Was Mr. Sefolosha tripping over something, as
23 far as you know?

24 A. I don't know.

25 Q. Were there any barricades or

1 Daniel Dongvort

2 debris on the sidewalk that would have tripped
3 Mr. Sefolosha?

4 A. Not that I recall.

5 Q. You didn't trip over anything;
6 right?

7 A. No, ma'am.

8 Q. Was it raining at that point?

9 A. I don't believe so, no.

10 Q. What observations did you make
11 with respect to physical contact between
12 Officer Caster and Mr. Sefolosha at that
13 precise moment when you say you saw them
14 stumbling?

15 A. I didn't see any physical contact
16 between the two of them.

17 Q. Didn't Officer Caster put his
18 physical body on Mr. Sefolosha?

19 A. That was after I turned my
20 attention. At that point, I noticed.

21 Q. What did you see?

22 A. Officer Caster going to grab
23 Mr. Sefolosha.

24 Q. Where did he grab him?

25 A. I don't recall exactly. I believe

1 Daniel Dongvort

2 his arm.

3 Q. How tall is Officer Caster? He's
4 a tall guy too; right?

5 A. He's a little taller than me.
6 Maybe 6'2", 6'4", somewhere in that vicinity.

7 Q. Which arm did Officer Caster grab
8 of Mr. Sefolosha's?

9 A. At that moment, I don't recall.

10 Q. You said that your attention was
11 now off of the down on his luck guy, and now
12 brought over to Mr. Sefolosha and Officer
13 Caster; right?

14 A. Yes, ma'am.

15 Q. What did you do when your
16 attention was now diverted back to
17 Mr. Sefolosha and Officer Caster?

18 A. I turned to Officer Caster and
19 began to assist him placing Mr. Sefolosha under
20 arrest.

21 Q. How did you know that Officer
22 Caster was trying to arrest Mr. Sefolosha?

23 A. With my experience and what I have
24 been taught to this point -- to that point --
25 officers don't generally put their hands on

1 Daniel Dongvort

2 people for no reason. It's typically to place
3 them under arrest.

4 Q. Did you know why Officer Caster
5 was placing Mr. Sefolosha under arrest?

6 A. At that moment, no, ma'am.

7 Q. Did you hear Officer Caster tell
8 Mr. Sefolosha why he was being placed under
9 arrest?

10 A. I don't recall hearing that, no,
11 ma'am.

12 Q. In fact the entire night while
13 you're still at the scene on Tenth Avenue and
14 17th Street, did you ever hear any officer tell
15 Mr. Sefolosha why it was that he was under
16 arrest?

17 A. I don't recall anyone saying that.

18 Q. When you say that you went over to
19 assist Officer Caster in the arrest, what did
20 you do?

21 A. I began to assist Officer Caster
22 trying to place Mr. Sefolosha's hands behind
23 his back.

24 Q. What did you do to do that? Did
25 you put your hands on Mr. Sefolosha?

1 Daniel Dongvort

2 A. Yes, ma'am.

3 Q. Which of your hands did you use?

4 A. Both.

5 Q. What part of Mr. Sefolosha's body
6 did you put your two hands on?

7 A. His left arm.

8 Q. Where was Officer Caster at that
9 moment?

10 A. Once I grabbed onto Mr. Sefolosha,
11 I believe he was on his right arm.

12 Q. So you had the left arm and
13 Officer Caster had the right arm?

14 A. Yes, ma'am.

15 Q. And you guys were still on the
16 sidewalk at that point, or where were you?

17 A. Between the sidewalk and where the
18 curb meets the street, inside of a car width.

19 Q. So you were in the street?

20 A. It was back and forth. It was
21 either right at the sidewalk or just inside the
22 street, yes, ma'am.

23 Q. Either you're on the sidewalk or
24 you're over the curb into the street.

25 A. I understand you're asking at that

1 Daniel Dongvort

2 exact moment, and I can't tell you. I'm saying
3 we were on the sidewalk and then we were on the
4 street, within a car's width from the sidewalk.

5 Q. Just to back up for a moment: At
6 the moment you saw Mr. Sefolosha stumbling, as
7 you say, out of the corner of your left eye,
8 was he on the sidewalk or was he in the street?

9 A. I believe he was either on the
10 sidewalk or just on the edge of the street,
11 where the sidewalk meets the street.

12 Q. When you initially saw Officer
13 Caster place his hands on Mr. Sefolosha, were
14 they on the sidewalk or were they in the
15 street?

16 A. I don't recall exactly.

17 Q. But by the time you got over
18 there, and you went on the left side and Caster
19 was on the right side, you guys were in the
20 street?

21 A. We were on the street, yes, not
22 the sidewalk.

23 Q. What happened next?

24 A. We placed Mr. Sefolosha under
25 arrest.

1 Daniel Dongvort

2 Q. How did you do that?

3 A. We were attempting to put his
4 hands behind his back. We had to put him on
5 the ground and put handcuffs on him.

6 Q. Did any other officers assist you
7 in placing Mr. Sefolosha under arrest?

8 A. There was a number of other
9 officers right in that area. I believe Officer
10 Giacona was actually right there, but I can't
11 be sure who else was actually right there.

12 Q. Rossi was there; right?

13 A. Like I said, there's many officers
14 that are right around. Rossi was there, yes.

15 Q. And O'Sullivan was there?

16 A. I believe so. I'm not sure.

17 Q. You watched the video, so you saw
18 everybody; right?

19 A. Yes.

20 Q. You saw your whole crew, right;
21 everybody was there?

22 A. Yes.

23 Q. How did you all effectuate the
24 arrest of Mr. Sefolosha?

25 A. Myself and Officer Caster put his

1 Daniel Dongvort

2 hands behind his back and someone put handcuffs
3 on his wrists. I just can't be sure whose
4 cuffs were being used.

5 Q. Who swept his leg?

6 A. I don't recall.

7 Q. When you say that you put him down
8 on the ground, how did you go about doing that?

9 A. Well, we always try to use the
10 least force necessary. Sometimes you have to
11 put them on the ground, lay them, put them on
12 the ground however it's done.

13 Q. Why did you put Mr. Sefolosha on
14 the ground?

15 A. Because he was actively resisting
16 arrest.

17 Q. How was he actively resisting
18 arrest?

19 A. He was trying to walk away and
20 move his arms.

21 Q. Was he using profanity at that
22 point?

23 A. I don't recall.

24 Q. What if anything was he saying?

25 A. Possibly something to the effect

0	28:22, 28:25, 33:9, 34:16, 36:24, 37:6, 37:17, 37:23, 40:21, 42:15, 43:13, 54:23, 70:14, 111:12 1885 [1] - 123:12 192 [1] - 1:23	3:58 [1] - 27:25	9
0037 [1] - 15:12 0057 [1] - 17:6 0358 [1] - 15:14 0400 [1] - 15:17 0415 [1] - 15:18 0443 [1] - 15:18 0500 [1] - 15:19 0605 [2] - 15:7, 17:9 0938 [1] - 15:20		4	9:30 [3] - 17:9, 17:20, 17:23
1	2	43rd [1] - 7:19 45 [1] - 15:9 453 [1] - 25:6 4:00 [2] - 27:24, 83:11 4:30 [1] - 83:11	A
	2 [8] - 2:5, 3:18, 23:8, 23:10, 23:13, 23:23, 24:6, 123:13 2012 [1] - 7:10 2013 [1] - 5:25 2014 [1] - 6:9 2015 [10] - 6:11, 8:24, 10:25, 15:6, 17:8, 17:19, 19:16, 21:4, 22:8, 84:14 2016 [7] - 8:24, 8:25, 9:2, 9:20, 9:25, 10:14, 117:19 2017 [4] - 1:19, 122:11, 122:20, 124:20 20th [1] - 5:7 212-684-7298 [1] - 1:25 2130 [3] - 15:7, 15:11, 17:9 225 [2] - 1:17, 3:5 23 [2] - 110:17, 123:13 230 [1] - 5:7 23rd [1] - 3:13 2425 [1] - 2:6 24th [2] - 1:18, 3:5 2564(JMF) [1] - 1:7 2612 [2] - 23:14, 123:13 26th [1] - 3:9 27 [1] - 10:25 29th [1] - 7:22	5	A.M [1] - 1:19 able [4] - 19:14, 64:12, 64:23, 79:7 Absolutely [1] - 111:19 absolutely [1] - 44:21 academy [3] - 7:7, 38:22, 75:24 acceptable [1] - 14:11 accident [1] - 114:5 accomplishing [1] - 32:25 according [1] - 104:2 accused [1] - 105:16 accusing [1] - 52:11 Action [2] - 1:6, 2:5 action [1] - 124:16 actions [5] - 7:12, 53:15, 54:15, 105:2, 112:20 actively [3] - 74:15, 74:17, 104:13 actual [6] - 18:12, 23:4, 103:23, 103:24, 118:4, 118:5 adamant [2] - 93:2, 93:4 adamantness [1] - 93:5 added [1] - 84:16 addition [3] - 8:21, 12:12, 12:21 additional [2] - 84:15, 99:23 address [5] - 5:5, 5:17, 5:19, 6:15, 25:5 admin [1] - 15:19 administration [8] - 104:4, 104:11, 104:18, 104:20,
		5 [3] - 1:19, 122:10, 123:6 5'6 [2] - 109:18, 109:22 5'7 [1] - 109:18 5'7" [1] - 109:22 50 [1] - 35:15 55 [1] - 3:13	
		6	
		6 [1] - 109:16 6'2 [1] - 69:6 6'4 [1] - 69:6 6/8/15 [1] - 15:9 62 [1] - 15:19 6:05 [1] - 17:9	
		7	
		7-foot [1] - 39:23 767 [1] - 3:9	
		8	
		8 [6] - 15:6, 17:8, 17:19, 19:16, 22:8, 84:14 805 [1] - 1:24 84 [1] - 15:22 85 [1] - 15:14 8th [5] - 115:16, 117:3, 117:9, 117:12, 119:10	
	3		
	3129 [1] - 15:25		

<p>105:3, 120:5, 120:7, 120:18</p> <p>afterwards [1] - 107:12</p> <p>agents [1] - 2:15</p> <p>ago [5] - 39:22, 112:12, 114:16, 115:17, 117:4</p> <p>AGREED [3] - 4:6, 4:10, 4:14</p> <p>aid [4] - 25:19, 26:13, 27:10, 92:21</p> <p>aided [1] - 15:18</p> <p>Alex [2] - 102:13, 102:14</p> <p>allegation [3] - 86:6, 117:19, 118:15</p> <p>allegations [4] - 8:10, 9:3, 9:8, 9:24</p> <p>allegedly [2] - 82:21, 107:23</p> <p>altercation [1] - 90:6</p> <p>amazing [1] - 64:13</p> <p>ambulance [9] - 27:18, 92:12, 92:14, 92:16, 92:18, 92:23, 93:3, 93:7, 96:3</p> <p>AND [3] - 4:6, 4:10, 4:14</p> <p>angry [3] - 90:8, 90:9, 90:11</p> <p>ankle [3] - 92:4, 92:5, 92:8</p> <p>answer [1] - 6:19</p> <p>answered [1] - 48:8</p> <p>answers [1] - 122:13</p> <p>ANTIC [2] - 2:4, 3:13</p> <p>Antic [57] - 17:17, 42:8, 42:14, 42:18, 44:9, 45:3, 45:9, 48:4, 48:12, 50:3, 50:5, 51:9, 51:17, 51:21, 53:8, 53:16, 56:4, 56:9, 56:10, 81:8, 82:3, 82:8, 82:21, 83:16, 83:23, 83:25, 84:16, 85:4, 85:7, 85:10, 85:14, 85:19,</p>	<p>85:24, 86:22, 87:2, 87:9, 87:12, 87:18, 87:21, 88:4, 88:9, 95:20, 95:23, 97:9, 98:17, 99:17, 101:9, 101:14, 110:13, 117:13, 117:16, 119:6, 119:25, 120:6, 121:2, 121:7, 121:10</p> <p>apologize [7] - 9:21, 10:24, 14:12, 29:5, 45:17, 67:16, 114:24</p> <p>apologizing [1] - 67:18</p> <p>appear [3] - 14:4, 22:17, 113:11</p> <p>appearance [4] - 16:16, 39:7, 109:5, 109:25</p> <p>appearance-wise [1] - 109:25</p> <p>appeared [1] - 25:11</p> <p>apprehend [1] - 18:14</p> <p>approximation [1] - 35:16</p> <p>April [13] - 6:11, 15:6, 17:8, 17:19, 19:16, 21:4, 22:8, 84:14, 115:16, 117:3, 117:9, 117:12, 119:10</p> <p>area [18] - 30:13, 31:6, 31:14, 45:10, 46:15, 53:19, 54:20, 65:4, 73:9, 82:5, 86:17, 96:13, 96:15, 96:21, 98:23, 111:2, 111:8, 120:25</p> <p>argument [1] - 90:5</p> <p>arise [1] - 6:24</p> <p>arm [10] - 69:2, 69:7, 71:7, 71:11, 71:12, 71:13, 76:16, 76:17, 76:23, 82:23</p> <p>arms [5] - 33:12, 54:24, 74:20, 105:9, 105:10</p> <p>arranged [1] - 97:23</p> <p>arrest [57] - 8:11, 9:5, 10:19, 17:4, 17:6,</p>	<p>17:14, 17:15, 18:10, 18:12, 20:4, 26:11, 26:23, 66:8, 66:10, 69:20, 69:22, 70:3, 70:5, 70:9, 70:16, 70:19, 72:25, 73:7, 73:24, 74:16, 74:18, 79:5, 79:11, 79:14, 79:22, 81:8, 82:12, 86:23, 87:2, 88:11, 88:19, 88:24, 90:22, 93:19, 93:22, 94:15, 103:18, 104:5, 104:13, 104:14, 105:6, 105:7, 105:12, 105:17, 106:2, 106:6, 106:18, 117:23, 118:17, 120:20, 120:22</p> <p>arrested [13] - 18:10, 18:11, 80:3, 87:21, 94:18, 103:21, 104:7, 105:16, 105:20, 118:9, 119:7, 119:15, 119:25</p> <p>arrests [2] - 115:19, 115:21</p> <p>arrive [1] - 25:3</p> <p>arrived [4] - 15:23, 26:3, 26:9, 95:24</p> <p>Artichoke [15] - 28:14, 29:18, 29:22, 30:3, 30:7, 37:19, 43:14, 46:2, 46:5, 46:16, 46:23, 61:19, 110:6, 111:7, 111:10</p> <p>ASP [1] - 77:21</p> <p>assault [1] - 15:17</p> <p>assigned [5] - 5:23, 6:2, 18:13, 22:14, 27:13</p> <p>assignment [8] - 5:21, 27:9, 27:11, 28:4, 28:10, 30:4, 46:14, 106:24</p> <p>assist [5] - 24:23, 69:19, 70:19, 70:21, 73:6</p>	<p>assistance [2] - 15:15, 79:19</p> <p>ASSOCIATES [1] - 3:8</p> <p>assume [2] - 16:21, 16:24</p> <p>assumption [2] - 81:11, 81:12</p> <p>athletes [2] - 21:15, 21:16</p> <p>Atlanta [1] - 94:7</p> <p>attack [2] - 108:13, 108:19</p> <p>attempt [1] - 83:17</p> <p>attempted [3] - 84:17, 85:7, 85:15</p> <p>attempting [3] - 66:7, 73:3, 79:21</p> <p>attention [10] - 32:16, 60:13, 60:23, 65:25, 66:5, 68:20, 69:10, 69:16, 76:14, 87:16</p> <p>Attorney [1] - 3:18</p> <p>Attorneys [2] - 3:4, 3:13</p> <p>attorneys [1] - 4:7</p> <p>Authority [1] - 7:2</p> <p>avenue [1] - 30:17</p> <p>Avenue [49] - 1:23, 3:9, 7:21, 7:23, 24:18, 28:14, 28:16, 29:2, 29:3, 29:4, 29:5, 29:8, 29:9, 29:17, 29:21, 31:14, 33:10, 34:17, 37:17, 37:21, 37:23, 43:13, 43:18, 44:4, 46:7, 49:23, 56:19, 57:5, 57:9, 57:24, 61:2, 61:12, 61:14, 61:16, 61:24, 62:20, 63:3, 63:6, 65:2, 65:17, 70:13, 75:9, 77:6, 80:22, 110:4, 111:13</p> <p>aware [21] - 6:25, 7:3, 8:9, 9:11, 9:14, 10:3, 27:5, 29:13, 34:4, 34:10, 34:13, 57:3, 78:13, 78:16, 79:3,</p>
---	---	--	--

88:18, 89:15, 90:4, 108:5, 115:24, 119:12	42:10, 42:18, 44:18, 51:21, 59:22, 68:11, 68:16, 89:23, 108:5, 110:9	3:20, 5:11, 111:22	Case [2] - 1:6, 2:6 case [1] - 64:21 CASTER [2] - 1:8, 2:8 Caster [51] - 15:10, 19:19, 20:17, 24:12, 26:19, 30:25, 33:21, 47:10, 62:25, 66:7, 66:9, 66:15, 66:21, 66:24, 68:12, 68:17, 68:22, 69:3, 69:7, 69:13, 69:17, 69:18, 69:22, 70:4, 70:7, 70:19, 70:21, 71:8, 71:13, 72:13, 72:18, 73:25, 76:16, 77:9, 79:21, 86:21, 88:21, 88:22, 90:15, 91:16, 101:21, 106:21, 107:3, 107:16, 112:6, 114:12, 114:13, 115:5, 115:16, 120:24, 121:3 catch [1] - 116:2 caught [1] - 60:12 caused [1] - 64:4 CCRB [19] - 8:11, 8:15, 8:18, 9:12, 9:16, 10:10, 10:14, 10:18, 11:11, 12:10, 22:25, 54:6, 55:20, 67:5, 110:17, 117:20, 118:3, 118:14, 118:19 celebrities [1] - 21:14 Celebrities [1] - 21:16 cell [5] - 93:18, 96:13, 96:15, 96:21, 98:22 central [1] - 92:16 certification [1] - 4:9 certified [1] - 25:17 certify [3] - 122:8, 124:9, 124:15 chained [1] - 97:23 challenged [1] - 109:14 chance [1] - 64:18 charge [3] - 84:15, 90:3, 106:8 charged [1] - 104:3
B		C	
bad [1] - 115:13 badge [1] - 36:17 band [2] - 19:5, 19:9 bar [12] - 97:12, 97:13, 98:2, 98:5, 98:7, 98:11, 98:18, 98:20, 99:3, 99:12, 99:17, 99:22 barricades [1] - 67:25 bars [2] - 6:16, 7:2 Based [1] - 39:19 basis [3] - 90:3, 108:15, 108:17 basketball [5] - 26:15, 38:15, 93:22, 96:24, 97:3 Bates [4] - 13:3, 23:13, 123:12, 123:13 Bates-stamped [3] - 23:13, 123:12, 123:13 baton [10] - 78:4, 78:5, 78:7, 78:12, 78:15, 78:17, 79:2, 79:5, 79:10, 79:17 beach [1] - 22:6 become [1] - 48:17 BEFORE [1] - 1:14 began [2] - 69:19, 70:21 begin [1] - 18:15 behind [10] - 56:17, 64:9, 64:10, 70:22, 73:4, 74:2, 80:11, 94:12, 97:22, 108:22 belt [1] - 78:15 bench [2] - 98:10, 99:3 better [1] - 23:19 Between [2] - 71:17, 91:24 between [20] - 4:7, 28:22, 37:4, 37:6, 37:18, 37:22, 40:20, 40:24, 41:4, 41:17,	big [2] - 10:9, 107:6 bit [4] - 22:4, 34:24, 35:2, 64:19 black [1] - 42:23 block [19] - 28:20, 28:22, 28:24, 29:19, 30:17, 31:8, 31:9, 31:13, 32:8, 32:14, 32:19, 32:22, 34:24, 35:2, 37:5, 45:6, 45:15, 45:21, 48:4 blood [1] - 124:17 Board [1] - 8:6 body [12] - 33:13, 33:18, 33:21, 33:24, 34:3, 34:6, 34:9, 34:12, 60:17, 68:18, 71:5, 82:20 book [22] - 12:16, 13:8, 13:16, 13:17, 13:21, 13:25, 14:14, 14:22, 15:3, 16:4, 16:14, 16:15, 16:18, 16:22, 17:3, 20:13, 22:16, 23:18, 23:20, 88:7, 123:11, 123:13 borough [1] - 84:11 bouncers [1] - 30:15 BRAFMAN [1] - 3:8 BRIAN [1] - 3:20 briefed [1] - 20:3 briefing [2] - 18:3, 20:9 bring [2] - 60:12, 65:25 bringing [1] - 91:8 Broadway [3] - 1:17, 3:5, 3:13 brought [6] - 8:15, 8:17, 10:10, 66:5, 69:12, 118:9 BROWN [5] - 3:15, 22:21, 111:22, 121:13, 123:6 BY [5] - 3:6, 3:15,	cabaret [7] - 6:6, 6:8, 6:11, 6:13, 18:23, 21:5, 34:5 cabinet [1] - 99:4 cam [6] - 33:18, 33:21, 33:24, 34:3, 34:6, 34:9 cams [1] - 34:12 canvassing [1] - 118:7 capacity [5] - 2:8, 2:10, 2:11, 2:13, 2:17 capital [1] - 29:4 capital-A [1] - 29:4 Captain [2] - 84:8, 84:13 captain [2] - 84:10, 86:7 Caption [1] - 1:11 car [61] - 20:16, 24:25, 36:22, 42:8, 42:22, 42:23, 43:6, 43:10, 43:12, 43:21, 44:7, 45:24, 46:7, 46:24, 47:6, 47:20, 48:15, 50:10, 51:13, 51:18, 51:24, 52:25, 53:4, 53:8, 53:12, 53:16, 53:21, 53:25, 54:11, 55:3, 55:6, 55:7, 56:11, 60:15, 61:6, 62:2, 62:4, 62:5, 63:15, 65:4, 65:8, 65:16, 71:18, 81:10, 81:11, 82:4, 86:17, 88:3, 90:18, 90:23, 91:3, 91:6, 91:9, 91:21, 92:2, 92:15, 94:23, 99:21 car's [1] - 72:4 card [1] - 93:12 care [5] - 15:17, 26:2, 30:12, 92:22, 93:15 carry [1] - 100:25 CARTER [1] - 3:17	

charges [9] - 8:4, 103:24, 108:7, 118:11, 118:22, 119:3, 120:3, 120:4, 121:6 charging [3] - 89:5, 89:7, 107:15 Charlie [5] - 15:15, 22:13, 24:10, 25:11, 26:25 chauffeur [1] - 50:23 check [2] - 16:5, 103:23 children [1] - 93:16 chronological [1] - 14:5 Church [1] - 3:18 circumstances [1] - 113:25 City [8] - 2:9, 2:10, 2:12, 2:14, 2:16, 5:5, 5:16, 113:23 CITY [2] - 1:9, 2:7 Civ [2] - 1:7, 2:6 civil [1] - 107:8 Civilian [1] - 8:5 civilian [1] - 38:3 claim [1] - 107:4 claims [1] - 107:17 clear [21] - 28:13, 28:20, 28:25, 29:10, 29:15, 29:17, 30:7, 30:9, 30:13, 31:5, 32:8, 32:22, 41:3, 41:16, 45:4, 45:10, 46:5, 46:15, 53:20, 83:22 cleared [3] - 30:15, 46:6, 111:7 clearing [4] - 28:5, 30:3, 30:5, 32:13 close [3] - 7:5, 27:24, 42:16 closed [2] - 43:18, 83:5 closer [3] - 37:6, 37:7, 49:15 Closer [1] - 37:8	clothing [1] - 50:16 club [11] - 20:25, 21:11, 21:17, 21:19, 21:22, 21:24, 27:21, 27:23, 28:5, 28:13, 29:17 Club [9] - 28:15, 28:16, 29:4, 29:6, 29:7, 29:9, 29:17, 29:21, 37:20 clubs [6] - 6:16, 7:3, 7:5, 18:16, 21:13, 34:22 Co [1] - 3:9 Co-Counsel [1] - 3:9 COCHRAN [1] - 3:12 code [2] - 19:2, 22:5 codes [1] - 14:23 colleagues [2] - 102:2, 112:8 color [5] - 15:7, 18:4, 18:17, 19:4, 19:14 colored [1] - 19:11 Coming [1] - 57:24 coming [5] - 27:21, 28:19, 57:22, 59:25, 113:7 command [1] - 92:16 commencing [1] - 1:19 comment [1] - 110:8 comments [4] - 103:3, 110:20, 110:22, 110:23 Community [1] - 15:22 compared [1] - 21:13 comparison [1] - 54:19 complain [1] - 101:8 Complaint [1] - 8:5 complaint [12] - 8:14, 9:10, 9:13, 9:16, 9:25, 10:5, 91:23, 92:11, 99:19, 103:24, 104:2, 119:14 complaints [3] - 91:2, 91:5, 99:23 complete [3] - 14:6, 23:16, 122:11	completed [1] - 9:13 computer [1] - 99:3 concentrating [1] - 33:2 concern [2] - 21:23, 27:4 concerned [7] - 13:9, 13:10, 13:11, 23:25, 41:9, 107:17, 107:19 concerning [1] - 18:9 concrete [1] - 57:2 conditions [3] - 6:16, 6:23, 18:6 conduct [10] - 103:22, 104:6, 105:2, 106:9, 106:10, 106:14, 106:15, 121:7, 121:8 confines [1] - 6:17 connection [9] - 8:11, 9:9, 9:16, 9:24, 10:19, 11:15, 12:23, 100:17, 102:3 consider [3] - 45:18, 111:15, 111:17 consideration [3] - 39:9, 39:10, 39:12 considered [2] - 58:16, 110:24 constantly [1] - 64:22 constitute [1] - 106:10 constituted [2] - 105:2, 121:11 constitutes [1] - 106:15 contact [6] - 68:11, 68:15, 76:19, 76:22, 77:17, 102:25 continued [1] - 1:11 conversation [5] - 35:24, 35:25, 51:24, 52:4, 114:18 conversations [4] - 41:13, 102:8, 103:16, 108:4 convey [1] - 93:5 cooperative [1] - 95:14 cop [1] - 108:22	cops [1] - 34:11 Copy [2] - 123:11, 123:13 copy [2] - 23:4, 23:19 corner [29] - 24:18, 28:25, 29:20, 29:23, 29:25, 30:18, 31:13, 37:4, 37:16, 41:8, 42:24, 43:15, 56:18, 56:21, 57:16, 57:21, 58:4, 59:8, 60:2, 60:12, 62:22, 63:19, 64:14, 66:19, 67:2, 72:7, 89:9, 111:12 CORPORATION [1] - 3:17 Correct [8] - 24:8, 83:15, 85:25, 87:23, 87:25, 95:12, 98:9, 105:14 correct [16] - 6:10, 10:3, 10:20, 11:5, 11:8, 20:24, 21:2, 24:7, 34:17, 41:12, 55:12, 80:25, 86:4, 90:7, 122:12, 122:14 Counsel [1] - 3:9 COUNSEL [1] - 3:17 COUNTY [2] - 122:6, 124:5 couple [2] - 18:5, 24:4 COURT [2] - 1:2, 2:1 Court [2] - 4:18, 15:22 court [7] - 5:18, 11:19, 12:7, 44:23, 101:18, 101:23, 102:17 crew [1] - 73:20 Crime [1] - 15:18 crime [4] - 28:20, 29:12, 30:5, 46:19 criminal [13] - 11:19, 11:20, 12:7, 40:7, 54:9, 55:11, 55:24, 89:12, 102:13, 103:8, 103:23, 107:8, 119:13 cross [2] - 54:24, 103:8 cross-examining [1] -
--	---	---	--

<p>103:8 crowd [1] - 45:7 cuff [1] - 98:4 cuffed [5] - 97:12, 97:22, 97:25, 98:3 cuffs [1] - 74:4 curb [4] - 43:24, 43:25, 71:18, 71:24 current [1] - 5:21 curse [3] - 55:13, 55:15, 56:4 cut [9] - 14:25, 15:2, 22:2, 22:17, 22:18, 22:19, 24:2, 24:7, 26:11 cut-offs [2] - 22:2, 22:17 cuts [1] - 7:21</p>	<p>86:1, 87:1, 88:1, 89:1, 90:1, 91:1, 92:1, 93:1, 94:1, 95:1, 96:1, 97:1, 98:1, 99:1, 100:1, 101:1, 102:1, 103:1, 104:1, 105:1, 106:1, 107:1, 108:1, 109:1, 110:1, 111:1, 112:1, 113:1, 114:1, 115:1, 116:1, 117:1, 118:1, 119:1, 120:1, 121:1 dark [1] - 83:9 date [10] - 10:23, 12:20, 13:8, 13:10, 13:11, 15:8, 18:5, 23:11, 23:25, 116:11 dated [1] - 84:14 dates [1] - 9:20 deal [2] - 10:9, 107:7 debris [1] - 68:2 December [3] - 6:9, 21:7, 21:8 decision [2] - 88:17, 88:23 DEF [1] - 123:12 DEF1885 [1] - 13:4 DEF2611 [2] - 23:14, 123:13 defendant [4] - 9:6, 93:14, 101:17, 115:22 Defendant [1] - 1:15 defendants [2] - 101:22, 102:2 Defendants [2] - 1:10, 2:18 Defendants/Actions [1] - 3:18 defense [1] - 102:13 definitely [2] - 25:15, 50:6 degree [5] - 104:5, 104:11, 104:19, 104:21, 105:4 degrees [1] - 15:10 demeanor [1] - 103:4 Department [7] - 2:9, 2:10, 2:12, 2:14, 2:16, 5:6, 5:16</p>	<p>department [1] - 25:24 deposed [5] - 113:22, 114:2, 114:16, 114:23, 115:5 deposition [14] - 12:23, 14:14, 113:2, 113:12, 113:21, 114:7, 114:21, 115:3, 115:8, 116:5, 116:9, 116:18, 116:20, 122:10 describe [1] - 28:9 described [3] - 12:22, 20:2, 46:18 description [1] - 118:8 DESCRIPTION [1] - 123:10 descriptions [1] - 39:4 desk [4] - 93:10, 94:11, 96:13, 99:4 destabilize [2] - 75:18, 76:3 detective [1] - 18:13 different [1] - 106:24 differently [1] - 67:16 difficult [1] - 108:21 diffuse [1] - 44:12 Diffuse [1] - 44:14 direct [1] - 45:12 directed [3] - 26:7, 29:14, 45:9 direction [2] - 33:8, 49:24 directly [1] - 34:21 disciplinary [1] - 7:12 discuss [1] - 117:6 discussed [2] - 112:16, 117:10 disorderly [7] - 103:22, 104:5, 106:8, 106:10, 106:15, 121:6, 121:8 disrespectful [1] - 55:18 DISTRICT [4] - 1:2, 1:3, 2:1, 2:2 diverted [1] - 69:16 division [1] - 6:3</p>	<p>document [2] - 12:18, 23:9 documents [1] - 23:13 DOES [1] - 2:14 done [2] - 74:12, 111:20 DONGVORT [8] - 1:8, 1:15, 2:11, 122:8, 122:16, 123:4, 123:10, 124:10 Dongvort [130] - 6:1, 7:1, 8:1, 9:1, 10:1, 11:1, 12:1, 12:19, 13:1, 13:3, 13:24, 14:1, 14:15, 14:18, 15:1, 15:25, 16:1, 17:1, 18:1, 19:1, 20:1, 21:1, 22:1, 23:1, 23:8, 23:10, 23:12, 23:23, 23:24, 24:1, 24:2, 24:6, 25:1, 26:1, 27:1, 28:1, 29:1, 30:1, 31:1, 32:1, 33:1, 34:1, 35:1, 36:1, 37:1, 38:1, 39:1, 40:1, 41:1, 42:1, 43:1, 44:1, 45:1, 46:1, 47:1, 48:1, 49:1, 50:1, 51:1, 52:1, 53:1, 54:1, 55:1, 56:1, 57:1, 58:1, 59:1, 60:1, 61:1, 62:1, 63:1, 64:1, 65:1, 66:1, 67:1, 68:1, 69:1, 70:1, 71:1, 72:1, 73:1, 74:1, 75:1, 76:1, 77:1, 78:1, 79:1, 80:1, 81:1, 82:1, 83:1, 84:1, 84:17, 85:1, 86:1, 87:1, 88:1, 89:1, 90:1, 91:1, 92:1, 93:1, 94:1, 95:1, 96:1, 97:1, 98:1, 99:1, 100:1, 101:1, 102:1, 103:1, 104:1, 105:1, 106:1, 107:1, 108:1, 109:1, 110:1, 111:1, 112:1, 113:1, 114:1, 115:1, 116:1, 117:1, 118:1, 119:1, 120:1, 121:1 Dooley [3] - 84:5, 84:8,</p>
D			
<p>DA's [1] - 22:25 Dan [2] - 85:18, 85:23 DANIEL [7] - 1:8, 1:15, 2:11, 122:8, 122:16, 123:4, 124:10 Daniel [120] - 6:1, 7:1, 8:1, 9:1, 10:1, 11:1, 12:1, 13:1, 14:1, 15:1, 15:25, 16:1, 17:1, 18:1, 19:1, 20:1, 21:1, 22:1, 23:1, 24:1, 25:1, 26:1, 27:1, 28:1, 29:1, 30:1, 31:1, 32:1, 33:1, 34:1, 35:1, 36:1, 37:1, 38:1, 39:1, 40:1, 41:1, 42:1, 43:1, 44:1, 45:1, 46:1, 47:1, 48:1, 49:1, 50:1, 51:1, 52:1, 53:1, 54:1, 55:1, 56:1, 57:1, 58:1, 59:1, 60:1, 61:1, 62:1, 63:1, 64:1, 65:1, 66:1, 67:1, 68:1, 69:1, 70:1, 71:1, 72:1, 73:1, 74:1, 75:1, 76:1, 77:1, 78:1, 79:1, 80:1, 81:1, 82:1, 83:1, 84:1, 84:4, 85:1, 85:18, 85:23,</p>			

<p>84:14 door [26] - 25:24, 43:4, 48:11, 49:12, 49:13, 49:14, 49:17, 49:22, 49:25, 50:8, 50:24, 52:2, 53:21, 56:8, 56:13, 56:24, 57:8, 59:12, 59:13, 59:15, 59:19, 59:22, 60:14, 61:6, 61:8, 62:3 doors [1] - 48:15 double [1] - 43:22 double-parked [1] - 43:22 down [41] - 7:19, 24:21, 24:24, 30:17, 34:24, 35:2, 59:2, 59:4, 59:7, 60:11, 60:21, 60:24, 61:12, 61:23, 62:7, 62:10, 62:13, 62:17, 62:19, 63:3, 63:17, 65:2, 65:16, 69:11, 74:7, 75:8, 75:24, 76:2, 76:4, 76:18, 77:5, 77:14, 77:18, 80:3, 80:21, 82:5, 86:13, 89:17, 89:25, 98:15, 110:3 drawn [1] - 60:23 dress [1] - 22:5 dressed [4] - 18:3, 21:22, 22:2, 22:6 driver [12] - 42:24, 42:25, 43:9, 44:4, 44:5, 45:25, 46:7, 46:25, 47:6, 47:20, 47:23, 48:7 driving [2] - 43:22, 81:4 duly [2] - 5:3, 124:12 During [1] - 34:19 during [6] - 12:10, 20:9, 77:13, 77:18, 80:2, 91:22 duties [1] - 6:13 duty [5] - 15:11, 17:7, 17:20, 84:10, 86:7</p>	<p style="text-align: center;">E</p> <p>early [4] - 9:2, 9:25, 10:14, 117:19 easily [1] - 75:20 east [1] - 7:21 eating [1] - 45:25 EDER [3] - 1:20, 124:7, 124:22 edge [1] - 72:10 effect [11] - 4:17, 54:2, 54:5, 74:25, 79:14, 81:25, 82:11, 94:19, 106:6, 120:20, 120:21 effectuate [3] - 73:23, 79:5, 79:22 effectuating [1] - 81:7 EILENDER [11] - 3:6, 5:11, 6:18, 12:17, 22:23, 23:5, 23:7, 80:6, 111:20, 121:14, 123:6 either [5] - 22:25, 37:3, 71:21, 72:9, 101:13 Either [1] - 71:23 ELIZABETH [1] - 3:6 employed [2] - 5:12, 5:15 employees [1] - 2:16 EMS [4] - 26:3, 26:8, 27:17, 30:12 EMT [3] - 25:17, 92:20, 114:4 EMTs [5] - 96:5, 96:11, 99:25, 100:4, 100:8 encounter [2] - 18:25, 108:19 encountered [1] - 63:17 end [2] - 15:24, 17:12 ended [1] - 107:6 engage [2] - 34:21, 106:9 engaged [1] - 106:15 entire [2] - 41:10, 70:12 entrance [4] - 28:15,</p>	<p>28:17, 29:18, 37:20 entries [3] - 13:23, 13:24, 14:22 EOT [1] - 15:24 equipment [2] - 26:2, 77:21 escort [5] - 31:7, 31:10, 56:19, 65:16, 89:25 escorted [4] - 60:25, 61:11, 86:16, 88:2 escorting [5] - 30:16, 62:19, 63:2, 63:5, 64:25 especially [1] - 117:11 ESQ [4] - 3:6, 3:15, 3:17, 3:20 essentially [1] - 19:8 established [1] - 46:20 estimate [2] - 37:15, 39:20 etc [1] - 94:24 ethnicity [2] - 39:8, 50:14 evening [1] - 41:10 event [1] - 10:24 events [2] - 115:19, 115:22 exact [4] - 31:23, 35:14, 72:2, 96:25 exactly [15] - 31:20, 37:2, 38:8, 41:15, 50:25, 52:9, 63:20, 68:25, 72:16, 87:15, 92:2, 100:3, 100:9, 107:3, 113:5 examination [3] - 4:15, 124:11, 124:13 Examination [1] - 123:5 EXAMINATION [3] - 1:14, 5:11, 111:22 examine [1] - 100:2 examined [1] - 5:8 examining [2] - 100:4, 103:8 except [2] - 4:11, 14:19</p>	<p>exchanged [3] - 40:20, 41:4, 51:20 exchanges [2] - 42:17, 44:18 excuse [1] - 93:13 Exhibit [11] - 12:19, 13:3, 13:24, 14:15, 14:18, 23:10, 23:13, 23:23, 23:24, 24:3, 24:6 exhibit [1] - 13:13 EXHIBITS [1] - 123:9 exonerated [2] - 10:2, 119:3 expand [3] - 78:6, 78:11, 79:17 expandable [2] - 78:5, 78:7 expect [2] - 55:19, 55:23 experience [1] - 69:23 extensive [1] - 111:16 eye [21] - 56:18, 56:20, 56:21, 56:22, 57:17, 57:19, 57:22, 58:4, 59:9, 60:2, 60:12, 63:9, 63:11, 63:20, 64:13, 64:14, 66:20, 67:2, 72:7, 89:9 eyes [1] - 57:10</p> <p style="text-align: center;">F</p> <p>face [2] - 75:8, 82:24 face-down [1] - 75:8 facial [1] - 39:8 facing [7] - 43:16, 56:25, 57:5, 57:6, 57:9, 64:19, 64:20 fact [5] - 44:15, 53:7, 55:3, 56:3, 70:12 falling [1] - 64:3 false [1] - 118:17 familiar [7] - 20:25, 21:9, 75:16, 75:20, 76:2, 76:6, 77:20 far [12] - 29:12, 36:19, 41:8, 67:23, 83:16,</p>
--	---	--	---

84:2, 84:3, 88:17, 88:20, 90:9, 112:8, 119:12 fast [2] - 48:18, 54:18 February [1] - 8:25 federal [2] - 101:18, 101:22 feet [5] - 37:14, 50:9, 64:9, 64:10, 109:16 fellow [15] - 32:13, 34:20, 38:4, 76:18, 79:16, 79:20, 85:10, 85:14, 95:15, 100:16, 101:20, 103:5, 103:16, 112:2, 117:8 female [1] - 26:9 few [1] - 111:23 fictitious [1] - 2:15 figure [1] - 67:18 figured [1] - 43:8 file [3] - 22:25, 23:2 filed [2] - 8:5, 108:8 filing [2] - 4:8, 99:4 fill [1] - 39:3 final [1] - 65:6 fine [1] - 23:6 fire [1] - 25:23 FIRM [1] - 3:12 first [17] - 5:3, 18:2, 25:19, 26:13, 27:10, 42:5, 42:20, 63:17, 86:11, 91:4, 92:21, 95:25, 102:17, 102:18, 102:20, 104:17, 119:12 fitting [1] - 118:8 five [2] - 21:6, 50:9 fixated [2] - 64:17, 64:22 Flailing [1] - 105:9 flip [1] - 22:2 flip-flops [1] - 22:2 floor [4] - 1:18, 3:5, 3:9, 3:13 flops [1] - 22:2 folks [5] - 30:12, 45:25, 52:24, 53:22, 54:6	follow [2] - 20:3, 89:17 Following [1] - 10:24 follows [1] - 5:9 Fontana [6] - 16:21, 17:2, 108:7, 116:16, 116:17, 117:2 foot [3] - 38:10, 57:2, 64:10 force [2] - 4:16, 74:10 forgot [1] - 115:3 form [2] - 4:11, 36:12 forth [2] - 71:20, 124:11 four [5] - 21:6, 21:8, 51:24, 52:24, 90:19 FRANCOLLA [8] - 3:20, 22:24, 23:6, 64:15, 84:19, 105:18, 109:2, 121:15 free [1] - 98:8 frequent [1] - 21:17 front [15] - 8:15, 8:17, 9:15, 10:10, 10:14, 10:18, 11:11, 14:9, 44:7, 61:19, 67:5, 94:11, 96:12, 115:20 fuck [3] - 36:12, 36:13, 36:16 fully [2] - 35:24, 75:2 FURTHER [2] - 4:10, 4:14	34:20, 35:5, 36:5, 36:9, 36:10, 36:20, 36:21, 37:24, 38:7, 40:3, 40:8, 40:13, 40:21, 40:24, 41:5, 41:6, 41:18, 41:19, 41:24, 42:12, 47:11, 73:10, 76:12, 88:8, 101:21, 103:9, 108:25, 109:4, 110:9, 110:24, 112:5, 112:10, 112:18, 112:22, 113:7, 113:13, 114:9, 120:24, 121:4 GIACONA [2] - 1:8, 2:9 girls [4] - 48:6, 50:3, 81:15, 110:19 given [4] - 11:15, 45:3, 122:13, 124:14 goodbye [2] - 65:11, 65:13 gotta [2] - 33:5, 53:20 governing [1] - 7:2 governmental [8] - 104:4, 104:10, 104:18, 104:20, 105:3, 120:5, 120:7, 120:18 grab [10] - 68:22, 68:24, 69:7, 79:10, 82:10, 82:15, 82:23, 83:4, 83:23 grabbed [5] - 71:10, 84:16, 85:4, 85:11, 85:24 graduate [1] - 7:6 ground [10] - 25:13, 73:5, 74:8, 74:11, 74:12, 74:14, 75:18, 75:19, 76:4, 110:5 group [3] - 44:9, 53:10, 56:15 grudge [1] - 108:17 guess [5] - 11:25, 38:19, 102:18, 108:14, 113:18 gunpoint [1] - 118:7	guy [25] - 58:9, 59:5, 59:8, 59:9, 60:11, 60:21, 60:24, 61:12, 61:23, 62:7, 62:10, 62:14, 62:17, 62:20, 62:23, 63:3, 63:17, 65:2, 65:17, 69:4, 69:11, 84:7, 89:17, 89:25, 93:21 guys [10] - 20:20, 34:9, 47:15, 54:18, 71:15, 72:19, 75:12, 90:22, 99:6, 108:19
			H
			hair [1] - 39:8 half [4] - 36:23, 39:22, 62:5, 63:16 hand [18] - 61:7, 79:10, 82:17, 82:18, 82:21, 83:5, 83:7, 91:9, 98:3, 98:7, 98:8, 98:11, 98:15, 120:8, 120:11, 120:16, 121:3, 124:20 handcuffed [7] - 26:22, 98:11, 98:17, 98:20, 99:12, 99:16, 99:22 handcuffs [11] - 25:12, 73:5, 74:2, 75:13, 86:14, 87:4, 88:13, 88:16, 91:19, 91:25, 97:10 handful [1] - 31:4 handle [2] - 59:20, 61:7 hands [17] - 61:8, 66:16, 69:25, 70:22, 70:25, 71:3, 71:6, 72:13, 73:4, 74:2, 77:4, 79:8, 80:11, 87:8, 87:12, 94:12, 97:22 handwriting [3] - 14:17, 15:13, 16:19 harassment [1] -

<p>121:11 Hawks [1] - 94:7 head [9] - 19:8, 57:7, 57:11, 57:13, 57:14, 63:4, 64:16, 64:18, 64:21 Headband [1] - 15:7 headband [3] - 18:4, 19:3, 19:6 headbands [1] - 18:18 hear [43] - 32:12, 34:19, 36:4, 36:8, 36:11, 36:15, 36:17, 40:23, 42:10, 42:17, 44:18, 44:25, 45:8, 51:20, 60:5, 60:20, 62:13, 62:16, 66:20, 70:7, 70:14, 79:25, 80:14, 80:18, 81:13, 81:14, 81:23, 85:9, 85:13, 86:5, 94:17, 94:21, 100:20, 100:24, 101:2, 101:8, 106:5, 106:13, 107:24, 110:10, 110:12, 110:13, 117:12 heard [17] - 24:9, 24:16, 36:21, 37:24, 38:3, 40:12, 40:20, 41:3, 41:4, 41:15, 41:17, 81:20, 84:7, 94:4, 94:7, 94:9, 118:23 hearing [8] - 35:12, 36:2, 41:23, 70:10, 86:10, 94:20, 106:3, 106:7 height [3] - 39:7, 98:12, 109:14 held [1] - 1:16 help [4] - 18:13, 40:17, 48:17, 79:20 HEREBY [1] - 4:6 hereby [3] - 4:9, 122:8, 124:9 hereinbefore [1] - 124:11</p>	<p>hereto [1] - 4:8 hereunto [1] - 124:19 history [1] - 7:13 hold [2] - 98:14, 99:7 holding [1] - 93:18 home [4] - 32:21, 33:5, 51:6, 53:21 homeless [4] - 58:14, 58:20, 58:23, 59:3 honestly [5] - 32:23, 35:17, 46:13, 118:18, 120:2 Honestly [1] - 35:23 hoodie [3] - 50:20, 50:21, 93:21 hospital [1] - 27:19 hotel [5] - 52:7, 52:17, 52:21, 65:8, 110:19 Hothead [1] - 103:10 housing [1] - 22:14 Housing [9] - 15:15, 22:13, 22:14, 24:10, 25:10, 26:25, 27:2, 27:3, 34:11 Hudson [1] - 7:25 humans [1] - 111:11 hurts [2] - 92:4, 92:8</p>	<p>102:5, 102:10, 112:3, 112:11, 112:17, 114:14, 115:16, 117:2, 118:2, 118:4, 118:5 included [1] - 86:6 indication [2] - 55:8, 67:21 individual [6] - 2:15, 2:17, 25:20, 26:12, 26:15, 60:18 Individually [4] - 2:8, 2:9, 2:11, 2:13 information [3] - 94:24, 95:21, 106:18 informed [4] - 9:23, 89:19, 105:5, 106:16 informing [1] - 113:6 inquiries [1] - 95:4 inside [10] - 6:16, 21:18, 21:22, 28:3, 30:15, 59:12, 59:14, 71:18, 71:21, 111:10 instances [1] - 7:4 instructions [2] - 65:7, 79:15 intended [1] - 2:15 interaction [7] - 41:17, 41:22, 42:2, 42:6, 42:10, 42:21, 89:23 interested [1] - 124:18 interview [1] - 118:19 investigate [2] - 38:5, 40:15 investigator [1] - 11:5 involved [3] - 35:24, 112:8, 120:25 involving [1] - 6:16 IS [3] - 4:6, 4:10, 4:14 issues [1] - 7:4 IT [3] - 4:6, 4:10, 4:14 item [1] - 106:17 itemize [1] - 93:11 itself [3] - 18:12, 30:10, 102:11</p>	<p>J</p> <p>JANE [1] - 2:14 January [3] - 1:18, 122:10, 124:20 JAROS [2] - 1:17, 3:4 JAROSLAWICZ [2] - 1:17, 3:4 JMF [1] - 2:7 job [4] - 36:3, 39:3, 48:14, 48:16 JOHN [2] - 1:8, 2:14 JORDAN [1] - 1:8 July [1] - 7:10 jumped [1] - 24:22 June [1] - 5:25 juts [1] - 7:22 juvenile [20] - 96:17, 96:19, 97:2, 97:7, 97:11, 97:14, 97:15, 97:24, 98:19, 98:25, 99:6, 99:9, 99:17, 99:22, 100:2, 100:11, 100:21, 101:5, 101:10, 101:14</p>
	<p>I</p> <p>IAB [1] - 23:2 idea [5] - 26:20, 38:14, 99:13, 100:19, 110:7 identification [2] - 12:20, 23:11 imagine [1] - 109:23 immediate [4] - 47:5, 65:15, 77:13, 86:16 Immediately [1] - 65:18 immediately [1] - 24:22 IN [1] - 124:19 inaccurate [1] - 89:21 INC [1] - 1:23 incident [15] - 8:3, 11:16, 14:2, 76:8,</p>		<p>K</p> <p>keep [2] - 57:12, 61:7 kept [1] - 110:18 kind [13] - 7:22, 30:16, 32:25, 43:2, 50:7, 51:23, 59:5, 59:8, 62:23, 92:22, 93:18, 99:4, 102:9 knowledge [8] - 14:8, 55:5, 56:6, 83:18, 84:23, 87:10, 90:10, 96:14 knows [1] - 109:15</p>
			<p>L</p> <p>ladies [6] - 50:3, 50:4, 53:7, 53:16, 56:9 lane [3] - 43:22, 81:2 last [7] - 43:12, 112:9,</p>

<p>112:21, 113:4, 114:13, 115:15, 116:25 law [2] - 1:16, 111:18 laws [3] - 6:25, 7:2 lawsuit [10] - 100:17, 101:18, 101:23, 102:3, 102:4, 102:11, 107:9, 112:3, 114:14, 115:23 lawsuits [3] - 112:22, 113:9, 116:13 lawyer [1] - 102:13 lay [1] - 74:11 learn [3] - 18:7, 118:16, 119:24 learned [2] - 26:9, 75:24 least [3] - 25:13, 74:10, 120:23 leave [10] - 32:19, 42:8, 44:16, 45:6, 45:20, 52:25, 53:18, 54:14, 62:8, 111:16 leaving [7] - 48:23, 53:11, 54:2, 54:11, 54:25, 110:25, 115:2 left [24] - 45:15, 48:24, 54:20, 56:14, 63:11, 63:19, 64:13, 64:14, 64:19, 65:4, 65:15, 66:20, 66:25, 71:7, 71:12, 72:7, 72:18, 76:16, 76:23, 89:8, 91:14, 91:15, 111:13, 111:14 left-side [1] - 76:23 leg [3] - 74:5, 75:18, 76:3 legal [1] - 11:7 length [6] - 36:22, 36:23, 62:5, 63:15, 63:16 length-and-a-half [3] - 36:23, 62:5, 63:16 less [2] - 35:17, 109:21 Less [1] - 35:19</p>	<p>letters [1] - 24:4 letting [2] - 27:24, 28:2 level [1] - 121:8 Lexington [1] - 1:23 liberal [1] - 22:5 lie [1] - 84:18 life [3] - 13:16, 13:25, 15:3 likely [1] - 47:19 line [1] - 14:20 lines [2] - 51:5, 51:11 link [1] - 98:4 Liquor [1] - 6:25 livery [3] - 45:24, 46:24, 47:6 located [1] - 43:11 location [1] - 86:24 lodge [1] - 93:17 look [7] - 18:6, 23:14, 45:19, 58:14, 59:4, 96:5, 96:11 looked [2] - 16:13, 52:6 looking [5] - 49:21, 50:2, 63:4, 63:6, 63:7 looks [2] - 58:23, 58:25 louder [1] - 35:25 loudly [1] - 35:6 luck [20] - 59:2, 59:5, 59:7, 60:11, 60:21, 60:24, 61:12, 61:23, 62:7, 62:10, 62:13, 62:17, 62:20, 63:3, 63:17, 65:2, 65:17, 69:11, 89:17, 89:25 lunging [3] - 107:4, 107:18, 107:23</p>	<p>12:8, 12:11, 13:6, 13:11, 14:12, 14:16, 14:19, 14:24, 17:21, 19:18, 19:21, 19:24, 20:7, 20:11, 21:3, 21:10, 21:20, 22:7, 22:11, 23:21, 24:14, 25:4, 25:18, 25:21, 26:17, 26:24, 27:8, 30:2, 30:6, 31:23, 33:11, 34:18, 36:18, 38:17, 38:23, 39:2, 39:15, 39:18, 39:25, 40:11, 41:21, 42:4, 43:15, 43:17, 43:20, 44:2, 44:6, 46:17, 46:21, 47:16, 47:21, 49:7, 49:16, 50:13, 53:2, 53:23, 57:12, 57:15, 57:20, 58:8, 58:10, 58:13, 58:17, 58:21, 59:6, 59:21, 59:24, 60:16, 60:19, 60:22, 61:18, 61:21, 62:4, 63:14, 63:18, 66:23, 68:7, 69:14, 70:6, 70:11, 71:2, 71:14, 71:22, 75:15, 76:21, 76:24, 77:15, 77:22, 78:8, 78:24, 79:18, 79:23, 80:16, 80:23, 81:6, 82:7, 83:10, 83:21, 83:24, 84:9, 84:12, 85:8, 85:12, 85:16, 86:12, 89:10, 91:12, 91:17, 91:20, 94:6, 94:13, 95:3, 95:16, 95:19, 96:4, 96:7, 97:5, 101:16, 101:19, 101:24, 102:22, 104:8, 106:20, 106:25, 107:5, 109:7, 109:17, 110:2, 111:5, 111:24, 113:15, 114:8, 118:20, 119:5, 119:19 mad [1] - 108:18</p>	<p>male [1] - 25:13 males [1] - 15:20 man [2] - 57:22, 58:6 maneuver [1] - 75:17 Manhattan [1] - 84:11 manner [4] - 55:19, 100:25, 110:10, 110:14 mark [2] - 23:5, 23:7 Mark [1] - 12:17 marked [4] - 12:18, 13:3, 23:9, 23:12 marriage [1] - 124:17 matter [2] - 67:17, 124:18 MCC [1] - 15:21 mean [17] - 7:25, 16:3, 17:13, 21:14, 27:24, 30:24, 31:10, 35:11, 42:22, 49:24, 63:23, 82:16, 93:4, 95:5, 104:12, 108:16, 109:15 meaning [1] - 23:17 means [3] - 16:4, 16:7, 17:14 meant [1] - 111:4 MEDEA [3] - 1:20, 124:7, 124:22 medical [1] - 93:15 meets [2] - 71:18, 72:11 member [4] - 2:8, 2:10, 2:12, 2:13 members [1] - 2:15 Memo [1] - 16:15 memo [23] - 12:16, 13:8, 13:16, 13:17, 13:20, 13:25, 14:14, 14:22, 15:3, 16:14, 16:18, 16:22, 17:3, 20:13, 22:16, 23:18, 23:19, 84:14, 84:21, 86:6, 88:7, 123:11, 123:13 menacing [1] - 84:15 mention [2] - 44:19, 52:17</p>
	<p>M</p>		
	<p>ma'am [153] - 5:13, 5:22, 6:4, 6:12, 7:8, 7:15, 8:2, 8:13, 8:19, 9:17, 10:11, 10:21, 11:6, 11:9, 11:13, 11:17, 11:21, 11:23,</p>		

<p>mentioned [3] - 113:15, 114:20, 115:25</p> <p>merely [2] - 10:6, 89:16</p> <p>met [2] - 102:16, 102:17</p> <p>MICHAEL [2] - 1:9, 2:12</p> <p>middle [2] - 54:23, 75:9</p> <p>Midget [1] - 40:14</p> <p>midget [15] - 35:5, 35:8, 35:20, 35:21, 36:7, 36:21, 37:24, 38:4, 41:6, 41:19, 41:24, 110:8, 110:23</p> <p>midnight [1] - 20:19</p> <p>midst [1] - 87:14</p> <p>midtown [1] - 15:21</p> <p>Midtown [1] - 15:21</p> <p>might [2] - 50:21, 109:9</p> <p>milling [1] - 50:7</p> <p>mind [2] - 95:9, 115:20</p> <p>minor [1] - 16:5</p> <p>minutes [1] - 18:6</p> <p>mission [1] - 32:25</p> <p>mistaken [2] - 108:24, 109:4</p> <p>mistaking [1] - 109:24</p> <p>misunderstood [1] - 45:17</p> <p>moment [28] - 10:7, 22:17, 31:3, 37:3, 51:14, 56:24, 59:10, 59:17, 59:23, 63:8, 66:12, 66:14, 66:25, 68:13, 69:9, 70:6, 71:9, 72:2, 72:5, 72:6, 76:21, 81:18, 88:25, 89:3, 90:6, 95:16, 100:10, 120:19</p> <p>money [1] - 89:18</p> <p>months [4] - 21:5, 21:8, 115:17, 117:4</p> <p>morning [3] - 17:10, 27:25, 83:11</p>	<p>motor [1] - 20:13</p> <p>mouth [1] - 53:13</p> <p>move [5] - 31:13, 34:16, 36:3, 57:14, 74:20</p> <p>moved [2] - 28:8, 64:19</p> <p>movement [1] - 34:19</p> <p>MR [7] - 22:24, 23:6, 64:15, 84:19, 105:18, 109:2, 121:15</p> <p>MS [14] - 5:11, 6:18, 12:17, 22:21, 22:23, 23:5, 23:7, 80:6, 111:20, 111:22, 121:13, 121:14, 123:6, 123:6</p>	<p>2:7, 122:4, 124:4, 124:5</p> <p>new [1] - 75:24</p> <p>New [28] - 1:18, 1:21, 1:24, 2:8, 2:10, 2:12, 2:13, 2:16, 3:5, 3:10, 3:14, 3:19, 5:4, 5:5, 5:7, 5:16, 25:6, 25:7, 113:23, 122:22, 124:9</p> <p>next [10] - 1:11, 25:24, 27:15, 28:18, 48:9, 56:15, 62:21, 72:23, 86:15, 93:9</p> <p>next-door [1] - 25:24</p> <p>nice [1] - 21:11</p> <p>nicely [1] - 22:3</p> <p>nicer [1] - 22:6</p> <p>night [27] - 16:20, 17:8, 17:18, 19:23, 20:5, 20:10, 22:8, 23:18, 31:16, 31:21, 32:3, 34:3, 40:24, 41:16, 42:3, 46:15, 70:12, 75:9, 76:8, 78:19, 83:18, 103:18, 107:10, 108:13, 112:20, 119:8, 119:11</p> <p>Ninth [4] - 7:23, 28:23, 37:6, 37:7</p> <p>Nobody [1] - 86:2</p> <p>nobody [2] - 28:19, 105:24</p> <p>normal [1] - 96:21</p> <p>normally [1] - 20:6</p> <p>North [1] - 37:11</p> <p>north [19] - 7:18, 7:19, 37:9, 37:12, 43:13, 43:16, 56:19, 57:24, 58:2, 60:25, 61:4, 61:12, 61:14, 61:15, 62:20, 63:3, 63:5, 65:2, 65:17</p> <p>northbound [1] - 61:23</p> <p>northeast [2] - 29:25, 37:16</p> <p>northwest [1] - 64:20</p> <p>nose [1] - 82:24</p>	<p>NOT [1] - 3:10</p> <p>Notary [5] - 1:20, 4:16, 5:3, 122:22, 124:8</p> <p>note [5] - 22:19, 39:13, 41:13, 41:14, 60:9</p> <p>noted [1] - 121:17</p> <p>notes [1] - 52:6</p> <p>nothing [5] - 24:2, 24:6, 81:16, 81:24, 94:25</p> <p>Nothing [5] - 62:12, 95:3, 95:9, 108:9, 114:11</p> <p>Notice [1] - 1:16</p> <p>notice [2] - 21:21, 21:25</p> <p>noticed [6] - 25:13, 56:17, 60:9, 62:22, 62:24, 68:20</p> <p>notification [1] - 113:11</p> <p>notified [5] - 112:24, 113:4, 118:14, 118:25, 119:2</p> <p>number [6] - 35:14, 58:19, 73:8, 114:16, 115:17, 117:4</p>
O			
<p>O'SULLIVAN [2] - 1:9, 2:13</p> <p>O'Sullivan [3] - 47:14, 73:15, 101:22</p> <p>OAK [17] - 20:23, 21:2, 21:9, 22:10, 24:10, 25:3, 25:5, 28:13, 28:18, 29:17, 30:16, 34:15, 37:4, 37:5, 37:16, 37:21, 37:22</p> <p>oath [2] - 5:9, 122:10</p> <p>obeying [1] - 44:16</p> <p>Objection [4] - 64:15, 84:19, 105:18, 109:2</p> <p>objections [1] - 4:11</p> <p>observations [2] - 68:10, 104:9</p> <p>observe [5] - 25:8,</p>			

<p>39:12, 39:13, 82:8, 100:4</p> <p>observed [3] - 26:22, 105:8, 106:11</p> <p>observer [2] - 38:25, 58:22</p> <p>obstruct [1] - 104:20</p> <p>Obstructing [1] - 104:3</p> <p>obstructing [6] - 104:10, 104:18, 105:3, 120:5, 120:7, 120:18</p> <p>obtained [1] - 95:22</p> <p>Obviously [2] - 52:8, 119:9</p> <p>obviously [4] - 10:24, 18:2, 29:16, 104:13</p> <p>occasion [1] - 117:8</p> <p>Occasionally [1] - 99:8</p> <p>occur [2] - 40:14, 79:9</p> <p>OF [8] - 1:3, 1:9, 2:2, 2:7, 122:4, 122:6, 124:4, 124:5</p> <p>offer [1] - 92:24</p> <p>offered [1] - 93:2</p> <p>OFFICER [4] - 2:7, 2:9, 2:11, 2:12</p> <p>Officer [68] - 15:24, 30:24, 30:25, 33:20, 33:21, 34:20, 35:5, 36:9, 36:10, 36:20, 40:2, 62:24, 66:7, 66:9, 66:15, 66:21, 66:24, 68:12, 68:17, 68:22, 69:3, 69:7, 69:12, 69:17, 69:18, 69:21, 70:4, 70:7, 70:19, 70:21, 71:8, 71:13, 72:12, 73:9, 73:25, 76:12, 76:16, 77:8, 78:10, 79:21, 84:17, 86:21, 88:20, 88:22, 90:15, 106:21, 107:2, 107:16, 108:25, 109:4, 110:9, 112:5, 112:6, 112:7,</p>	<p>112:10, 112:17, 112:22, 113:6, 113:13, 114:12, 114:13, 115:4, 115:16, 120:23, 120:24, 121:3, 121:4</p> <p>officer [19] - 7:14, 15:14, 16:22, 18:20, 18:21, 18:25, 27:14, 38:4, 40:17, 58:19, 70:14, 82:10, 82:13, 90:15, 113:24, 114:3, 120:9, 120:13, 120:17</p> <p>officer's [1] - 82:20</p> <p>Officers [1] - 19:19</p> <p>officers [43] - 2:15, 18:19, 19:3, 27:2, 27:3, 30:21, 30:23, 32:13, 33:3, 34:2, 34:21, 42:11, 42:18, 45:2, 47:4, 69:25, 73:6, 73:9, 73:13, 75:10, 75:11, 76:18, 76:25, 77:3, 77:12, 77:16, 79:16, 79:20, 85:10, 85:14, 87:11, 95:15, 100:17, 101:21, 103:5, 103:16, 105:22, 108:5, 110:21, 110:22, 112:2, 116:2, 117:8</p> <p>offices [1] - 1:16</p> <p>official [1] - 2:17</p> <p>officially [1] - 88:10</p> <p>offs [2] - 22:2, 22:17</p> <p>Once [3] - 27:17, 71:10, 93:25</p> <p>once [3] - 35:13, 75:5, 119:17</p> <p>One [6] - 8:21, 12:18, 38:24, 98:6, 109:9, 121:6</p> <p>one [39] - 8:21, 9:23, 13:12, 13:14, 13:17, 13:18, 14:20, 20:2, 25:11, 25:13, 25:14, 26:7, 37:18, 45:14,</p>	<p>56:14, 64:17, 64:22, 77:7, 79:10, 82:11, 85:21, 85:22, 91:9, 91:10, 97:16, 98:3, 98:6, 98:11, 101:6, 101:11, 104:15, 104:17, 105:5, 108:22, 117:8, 120:4</p> <p>One-page [1] - 12:18</p> <p>oOo [4] - 3:21, 5:10, 123:7, 123:14</p> <p>open [4] - 48:14, 49:13, 59:13, 61:8</p> <p>opened [12] - 43:3, 48:11, 49:12, 49:17, 49:22, 49:25, 52:2, 53:21, 56:24, 57:8, 61:6, 62:3</p> <p>opening [4] - 50:24, 56:8, 56:13, 60:14</p> <p>opinion [2] - 54:21, 90:2</p> <p>Opposite [1] - 59:18</p> <p>orange [1] - 15:8</p> <p>order [6] - 14:5, 28:12, 44:16, 45:12, 75:13, 75:17</p> <p>orders [6] - 44:20, 45:2, 45:8, 45:16, 45:18, 55:6</p> <p>otherwise [1] - 95:14</p> <p>outcome [1] - 124:18</p> <p>outside [3] - 50:8, 59:19, 100:11</p> <p>overheard [1] - 52:5</p> <p>own [1] - 36:3</p>	<p>13:17, 13:18, 22:19, 22:21, 23:9, 110:17, 123:11</p> <p>pages [2] - 13:12, 123:13</p> <p>pain [6] - 91:2, 91:5, 91:23, 92:11, 99:19, 99:23</p> <p>parked [2] - 43:21, 43:22</p> <p>parking [1] - 43:21</p> <p>part [7] - 30:4, 33:13, 39:3, 46:19, 48:14, 48:16, 71:5</p> <p>Part [1] - 46:14</p> <p>parties [2] - 4:8, 124:16</p> <p>partner [1] - 106:22</p> <p>Partner [1] - 15:10</p> <p>party [2] - 22:7, 43:7</p> <p>passenger [3] - 49:14, 59:15, 59:19</p> <p>passenger-side [1] - 49:14</p> <p>past [2] - 29:2, 62:2</p> <p>patient [3] - 26:3, 26:21, 93:13</p> <p>patients [2] - 27:18, 28:7</p> <p>patrol [1] - 84:10</p> <p>patrolling [1] - 18:15</p> <p>patrons [1] - 34:22</p> <p>PAUL [2] - 1:8, 2:9</p> <p>paying [2] - 32:15, 76:14</p> <p>PBA [1] - 11:8</p> <p>pedigree [3] - 93:12, 94:24, 95:21</p> <p>people [26] - 21:21, 26:4, 27:21, 28:3, 28:5, 28:21, 30:17, 33:4, 34:16, 36:3, 45:6, 45:15, 46:4, 46:12, 46:23, 47:8, 48:3, 48:24, 49:3, 49:9, 55:20, 58:20, 70:2, 110:5, 111:6, 111:10</p>
		P	
		<p>P.C [1] - 3:8</p> <p>P.M [3] - 17:9, 17:20, 121:17</p> <p>P.O [6] - 1:8, 1:8, 1:9, 1:15</p> <p>PAGE [2] - 123:4, 123:10</p> <p>page [11] - 1:11, 12:18, 13:12, 13:15,</p>	

<p>perceived [1] - 54:21</p> <p>Periodically [1] - 102:5</p> <p>periodically [2] - 111:25, 117:7</p> <p>PERO [2] - 2:4, 3:13</p> <p>Pero [8] - 84:16, 85:3, 85:6, 85:10, 85:14, 85:19, 85:23, 119:6</p> <p>perpetrator [3] - 18:14, 27:6, 79:13</p> <p>person [7] - 25:11, 26:10, 43:2, 58:14, 58:23, 59:25, 94:11</p> <p>personally [2] - 26:16, 104:24</p> <p>personnel [1] - 108:6</p> <p>PFD [1] - 15:11</p> <p>photocopy [1] - 13:20</p> <p>physical [9] - 7:16, 59:22, 68:11, 68:15, 68:18, 76:19, 76:22, 77:4, 77:17</p> <p>Physical [1] - 109:25</p> <p>physically [7] - 24:15, 31:11, 36:19, 36:24, 43:10, 49:18, 61:13</p> <p>pickup [3] - 15:16, 22:15, 27:25</p> <p>pictures [1] - 33:16</p> <p>piece [1] - 77:20</p> <p>pizza [7] - 28:13, 29:22, 30:9, 45:25, 46:12, 49:3, 49:9</p> <p>Pizza [15] - 28:14, 29:19, 29:22, 30:3, 30:8, 37:19, 43:14, 46:2, 46:6, 46:16, 46:24, 61:20, 110:6, 111:7, 111:10</p> <p>place [16] - 28:13, 29:22, 30:10, 46:12, 49:3, 49:9, 66:8, 66:10, 66:15, 70:2, 70:22, 72:13, 82:21, 87:11, 88:23, 121:2</p> <p>Placed [1] - 82:17</p> <p>placed [12] - 70:8,</p>	<p>72:24, 83:6, 86:14, 86:22, 87:2, 88:10, 88:19, 90:22, 93:21, 96:16, 103:17</p> <p>placing [3] - 69:19, 70:5, 73:7</p> <p>plainclothes [5] - 18:19, 18:20, 18:22, 18:25, 19:3</p> <p>Plaintiff [5] - 1:6, 2:5, 3:4, 3:9, 3:13</p> <p>PLAINTIFF'S [1] - 123:10</p> <p>Plaintiff's [2] - 12:19, 23:10</p> <p>player [5] - 26:15, 38:16, 93:22, 96:24, 97:3</p> <p>PLLC [2] - 1:17, 3:4</p> <p>plural [1] - 112:23</p> <p>PO [1] - 15:19</p> <p>point [31] - 18:15, 20:22, 27:10, 27:11, 27:23, 32:7, 40:20, 43:11, 43:19, 45:14, 45:20, 47:18, 56:7, 63:13, 64:16, 65:24, 66:16, 68:8, 68:20, 69:24, 71:16, 74:22, 76:17, 82:11, 86:9, 87:17, 94:14, 96:23, 99:21, 111:15</p> <p>police [14] - 7:6, 7:13, 38:22, 42:11, 42:18, 45:2, 46:15, 58:18, 75:10, 75:11, 75:16, 105:22, 113:23, 114:3</p> <p>POLICE [4] - 2:7, 2:9, 2:11, 2:12</p> <p>Police [9] - 2:9, 2:10, 2:12, 2:14, 2:16, 5:6, 5:16, 15:24, 84:16</p> <p>polite [1] - 32:20</p> <p>Porteus [13] - 15:10, 19:19, 20:18, 24:12, 26:19, 30:25, 33:20, 47:10, 90:16, 112:7, 116:4, 116:12, 116:14</p>	<p>portion [1] - 35:25</p> <p>position [3] - 64:17, 75:7, 89:16</p> <p>positive [9] - 8:23, 9:6, 9:20, 14:3, 83:3, 90:16, 96:22, 118:12, 118:13</p> <p>possible [4] - 48:19, 89:22, 108:14, 108:16</p> <p>possibly [3] - 9:5, 25:14, 38:19</p> <p>Possibly [1] - 74:25</p> <p>posters [1] - 18:8</p> <p>potential [1] - 39:5</p> <p>practice [2] - 19:25, 20:3</p> <p>Precinct [12] - 5:6, 5:20, 5:24, 6:3, 6:17, 7:17, 15:12, 15:20, 15:23, 34:8, 93:8, 94:2</p> <p>precinct [15] - 18:7, 18:9, 18:11, 20:5, 90:13, 92:17, 93:24, 94:23, 96:10, 100:8, 102:18, 102:20, 102:24, 103:2, 119:18</p> <p>precise [2] - 59:17, 68:13</p> <p>prep [1] - 117:11</p> <p>preparation [3] - 12:14, 14:14, 67:8</p> <p>prepare [2] - 12:24, 52:17</p> <p>PRESENT [1] - 3:10</p> <p>present [3] - 15:11, 15:23, 89:11</p> <p>pretty [9] - 27:12, 28:2, 28:25, 29:15, 38:18, 42:25, 45:15, 77:9, 93:2</p> <p>Pretty [1] - 112:7</p> <p>prisoners [2] - 96:21, 99:7</p> <p>procedure [2] - 75:20, 76:3</p> <p>proceed [1] - 61:15</p> <p>proceeded [3] - 24:21,</p>	<p>24:24, 56:18</p> <p>process [1] - 93:19</p> <p>produced [2] - 22:23, 23:3</p> <p>profanity [6] - 36:12, 55:13, 55:18, 55:23, 56:4, 74:21</p> <p>professional [3] - 21:14, 38:15, 93:22</p> <p>progress [1] - 15:17</p> <p>prosecuted [1] - 107:7</p> <p>provided [1] - 90:2</p> <p>Public [5] - 1:21, 4:16, 5:3, 122:22, 124:8</p> <p>pulled [1] - 27:17</p> <p>punch [7] - 83:17, 83:20, 83:25, 84:17, 85:7, 85:15, 85:20</p> <p>puncture [2] - 25:15, 26:14</p> <p>purpose [1] - 10:13</p> <p>purposely [1] - 44:11</p> <p>purposes [2] - 18:24, 64:24</p> <p>pursuant [1] - 1:15</p> <p>pushed [1] - 87:18</p> <p>pushing [1] - 87:14</p> <p>put [25] - 27:18, 61:8, 68:17, 69:25, 70:25, 71:6, 73:3, 73:4, 73:5, 73:25, 74:2, 74:7, 74:11, 74:13, 87:3, 87:8, 88:12, 88:15, 91:24, 93:18, 96:13, 97:2, 97:6, 120:8</p> <p>putting [2] - 120:11, 120:16</p>
Q			
<p>query [1] - 107:3</p> <p>questions [5] - 11:5, 107:10, 111:23, 114:10, 116:21</p> <p>quickly [1] - 111:2</p> <p>quote [5] - 17:11, 17:12, 30:5, 80:17, 110:17</p>			

<p>R</p> <p>radio [1] - 22:15 radioed [1] - 92:16 Rain [1] - 15:9 raining [1] - 68:8 rather [1] - 15:21 read [12] - 6:18, 6:20, 14:21, 15:13, 16:7, 16:19, 23:17, 44:23, 52:16, 67:7, 80:8, 122:9 Read [1] - 80:6 ready [1] - 18:3 real [4] - 13:16, 13:25, 15:3, 84:21 real-life [2] - 13:25, 15:3 reality [1] - 109:10 realize [1] - 93:20 really [5] - 29:15, 39:23, 41:3, 76:13, 107:6 rear [6] - 28:15, 28:17, 29:18, 49:14, 59:14, 97:25 rear-cuffed [1] - 97:25 reason [12] - 7:12, 10:12, 10:15, 10:17, 70:2, 87:9, 89:20, 90:2, 96:25, 108:12, 108:13, 110:16 receive [1] - 22:9 received [1] - 7:11 recognize [4] - 13:4, 26:14, 26:16, 58:9 recollection [4] - 9:5, 38:2, 53:9, 104:6 record [5] - 6:20, 80:8, 122:12, 122:13, 124:13 referred [1] - 20:12 referring [2] - 16:18, 48:2 refresh [1] - 104:6 refusal [2] - 54:17, 54:22</p>	<p>refusing [1] - 54:14 regard [1] - 113:8 regards [2] - 17:16, 102:10 register [1] - 25:19 regular [1] - 19:6 REINIG [1] - 1:23 related [1] - 124:16 Relax [4] - 75:2, 75:4, 79:25, 80:18 remember [43] - 10:23, 28:11, 31:21, 31:24, 32:23, 35:3, 35:12, 35:13, 36:2, 41:9, 41:11, 46:13, 46:23, 47:3, 49:6, 49:8, 50:17, 50:19, 52:4, 52:13, 52:15, 52:21, 60:6, 67:19, 75:23, 76:13, 77:8, 77:19, 87:13, 87:15, 92:2, 92:5, 94:20, 96:24, 103:7, 103:11, 106:7, 107:22, 112:16, 116:15, 117:25, 118:18, 120:15 remembered [2] - 54:7, 103:9 render [1] - 92:20 Rendered [1] - 15:17 rendering [1] - 26:13 repeatedly [4] - 35:5, 35:10, 35:11, 37:25 report [2] - 17:19, 18:12 reported [1] - 118:6 reporter [5] - 1:20, 5:18, 6:21, 44:23, 80:9 Reporter [1] - 124:7 REPORTING [1] - 1:23 reports [2] - 18:10, 39:4 represent [1] - 2:15 representative [1] - 11:8 represented [1] - 11:7</p>	<p>requesting [1] - 31:12 requests [2] - 53:18, 111:16 reserved [1] - 4:12 resist [1] - 105:7 resisting [9] - 74:15, 74:17, 104:5, 104:13, 104:14, 105:6, 105:12, 105:16, 106:18 respect [5] - 20:23, 22:9, 30:4, 68:11, 95:10 respective [1] - 4:7 respond [1] - 95:4 response [1] - 92:10 rest [1] - 27:11 return [2] - 15:8, 18:5 Review [1] - 8:6 review [7] - 9:12, 11:10, 11:14, 11:22, 11:24, 12:4, 17:3 reviewed [4] - 12:14, 12:23, 14:13, 14:15 RICHARD [2] - 1:8, 2:8 rise [1] - 120:6 River [1] - 7:25 RMP [5] - 15:9, 20:12, 24:13, 90:14, 91:7 robbery [1] - 118:7 room [20] - 96:18, 96:19, 97:3, 97:7, 97:11, 97:14, 97:15, 97:24, 98:19, 98:25, 99:6, 99:9, 99:17, 99:22, 100:2, 100:12, 100:21, 101:5, 101:10, 101:15 rose [1] - 121:8 Rossi [6] - 47:14, 73:12, 73:14, 78:10, 79:2, 101:21 ROSSI [1] - 1:8 roughly [4] - 39:23, 62:4, 112:15, 117:5 Roughly [6] - 9:19, 21:6, 36:22, 83:13, 109:20, 109:22</p>	<p>routine [1] - 17:25 rude [10] - 110:10, 110:14, 110:18, 110:23, 110:25, 111:4, 111:8, 111:14, 111:17, 111:18 run [1] - 18:9 running [1] - 27:6</p> <p>S</p> <p>safety [3] - 57:15, 64:24, 107:19 saw [29] - 12:6, 38:20, 52:17, 56:12, 64:6, 65:21, 66:7, 66:18, 66:25, 68:13, 72:6, 72:12, 73:17, 73:20, 82:10, 89:8, 102:20, 107:4, 107:11, 107:15, 107:18, 107:22, 115:2, 115:4, 116:19, 118:7, 119:15, 119:17, 121:12 scene [7] - 15:18, 28:20, 29:12, 30:5, 46:19, 54:14, 70:13 scratched [6] - 15:12, 16:2, 16:7, 16:10, 16:11, 16:12 scream [1] - 100:24 screaming [2] - 81:14, 95:10 Screw [1] - 54:24 sealing [1] - 4:8 second [6] - 104:4, 104:11, 104:15, 104:19, 104:21, 105:4 secret [1] - 109:16 sector [1] - 22:14 security [1] - 15:18 see [38] - 15:5, 18:10, 26:4, 40:7, 40:15, 44:11, 46:12, 49:10, 57:22, 59:7, 59:9, 59:25, 60:7, 63:9, 63:20, 64:12, 64:23,</p>
--	---	--	---

<p>66:4, 66:15, 66:24, 67:10, 68:15, 68:21, 77:12, 85:19, 85:23, 87:11, 89:6, 89:7, 105:25, 114:25, 119:20, 119:23, 120:6, 121:2, 121:7, 121:9, 121:10 seeing [1] - 49:8 seem [1] - 95:14 Sefolosha [162] - 8:12, 10:19, 17:4, 17:17, 35:4, 36:5, 36:8, 36:20, 36:21, 37:24, 38:13, 39:20, 40:6, 40:12, 40:21, 40:24, 41:5, 41:18, 41:23, 41:24, 42:3, 42:6, 42:11, 42:14, 43:7, 44:9, 44:19, 45:3, 45:9, 48:4, 48:12, 50:2, 50:7, 50:23, 51:21, 53:3, 53:24, 54:10, 54:14, 55:12, 55:17, 55:22, 56:3, 56:8, 56:10, 56:14, 59:10, 59:23, 60:14, 60:20, 62:14, 62:16, 62:23, 63:10, 63:21, 65:3, 65:12, 65:15, 65:21, 66:2, 66:6, 66:8, 66:10, 66:16, 66:18, 66:22, 67:2, 67:22, 68:3, 68:12, 68:18, 68:23, 69:12, 69:17, 69:19, 69:22, 70:5, 70:8, 70:15, 70:25, 71:10, 72:6, 72:13, 72:24, 73:7, 73:24, 74:13, 75:8, 75:14, 76:7, 76:18, 76:20, 77:4, 77:13, 77:17, 79:6, 79:8, 79:22, 79:24, 80:2, 80:15, 80:18, 80:21, 81:8, 82:5, 82:12, 86:13, 87:16, 88:3, 88:4, 88:5, 88:6,</p>	<p>88:9, 88:11, 88:16, 88:18, 88:23, 89:15, 89:24, 90:3, 90:12, 90:21, 90:25, 91:5, 91:18, 91:22, 92:21, 94:5, 94:10, 94:22, 95:25, 96:6, 96:11, 97:10, 99:10, 99:20, 100:12, 100:20, 101:4, 101:13, 103:17, 103:20, 104:2, 104:10, 104:19, 105:2, 105:7, 105:25, 106:5, 106:9, 106:14, 107:7, 107:18, 107:22, 108:8, 108:12, 110:3, 110:9, 110:10, 110:24 SEFOLOSHA [3] - 1:5, 3:4, 3:9 Sefolosha's [7] - 69:8, 70:22, 71:5, 76:16, 89:12, 95:21, 102:12 senior [1] - 27:13 sentence [1] - 84:25 sergeant [6] - 15:13, 16:3, 16:13, 16:17, 16:20, 94:11 Sergeant [6] - 16:20, 17:2, 108:7, 116:16, 116:17, 117:2 servants [1] - 2:16 set [2] - 124:11, 124:20 seven [1] - 21:5 Seventh [2] - 7:21, 7:23 several [1] - 77:12 shall [1] - 4:12 Shield [1] - 15:25 shooting [1] - 33:15 short [1] - 109:15 shorter [4] - 38:11, 38:12, 109:8, 109:11 shorthand [1] - 1:20 Shorthand [1] - 124:7 Shortly [1] - 96:9 shoulder [6] - 83:2,</p>	<p>83:6, 83:7, 120:11, 120:17, 121:3 shoulders [2] - 57:4, 57:6 shouting [1] - 66:21 show [1] - 13:2 shown [1] - 12:9 side [21] - 7:19, 7:20, 37:9, 37:10, 37:11, 37:12, 44:4, 49:14, 59:11, 61:9, 72:18, 72:19, 76:23, 91:10, 91:11, 91:13, 91:14, 91:15, 91:16, 98:4, 98:6 sidewalk [25] - 37:4, 49:15, 49:18, 49:20, 50:12, 56:15, 58:7, 59:14, 61:17, 61:24, 63:12, 65:22, 65:24, 68:2, 71:16, 71:17, 71:21, 71:23, 72:3, 72:4, 72:8, 72:10, 72:11, 72:14, 72:22 sign [2] - 16:4, 16:22 signature [2] - 16:24, 17:5 signed [2] - 4:15, 4:17 Signed [1] - 122:18 single [1] - 13:14 sit [2] - 97:19, 100:11 sitting [4] - 52:20, 97:21, 98:10, 100:18 Sitting [2] - 58:11, 108:11 situation [3] - 44:12, 44:14, 48:20 situations [1] - 48:17 Six [1] - 38:10 six [1] - 21:5 Six-foot [1] - 38:10 SLA [1] - 6:24 slang [1] - 16:8 slash [1] - 15:10 small [1] - 37:19 someone [9] - 45:19, 56:17, 58:25, 67:21, 74:2, 84:4, 87:13,</p>	<p>120:20, 120:22 someplace [1] - 97:18 sometime [3] - 112:14, 113:4, 117:19 Sometimes [2] - 74:10, 96:22 somewhat [1] - 10:9 somewhere [1] - 69:6 soon [2] - 92:15, 112:14 sooner [1] - 44:24 sorry [1] - 115:4 sort [2] - 31:17, 93:17 sound [2] - 11:2, 79:13 sounds [1] - 11:3 south [5] - 37:10, 50:2, 57:6, 57:9, 57:25 South [2] - 49:23, 84:11 southbound [2] - 56:25, 58:3 southern [1] - 7:19 SOUTHERN [2] - 1:3, 2:2 speaking [1] - 32:18 specific [5] - 6:3, 80:13, 94:25, 112:11, 114:11 specifically [18] - 32:24, 33:2, 45:2, 45:8, 45:13, 45:19, 51:8, 52:15, 75:23, 77:8, 92:25, 95:7, 104:12, 108:23, 112:4, 112:19, 117:15, 119:13 Specifically [3] - 6:15, 30:24, 45:11 specifics [1] - 20:21 Specifics [1] - 32:15 Spiro [4] - 102:13, 102:14, 103:4, 103:7 spoken [4] - 112:2, 112:4, 112:5, 112:6 spot [2] - 31:3, 64:22 squad [1] - 18:14 Ss [2] - 122:5, 124:4 stabbed [3] - 26:5,</p>
---	---	--	---

<p>26:8, 26:10 stabbing [2] - 20:23, 22:15 stabilize [1] - 26:3 stamped [4] - 13:4, 23:13, 123:12, 123:13 stand [3] - 77:23, 77:24, 78:2 standing [12] - 33:6, 43:2, 44:6, 56:25, 57:2, 59:13, 59:16, 62:24, 63:24, 94:10, 94:12, 96:12 stands [2] - 20:8, 95:9 start [3] - 7:18, 15:3, 20:17 started [3] - 21:7, 29:16, 64:25 starts [1] - 15:4 STATE [2] - 122:4, 124:4 State [5] - 1:21, 5:4, 6:25, 122:22, 124:8 statements [1] - 101:13 STATES [2] - 1:2, 2:1 stay [1] - 104:17 stem [1] - 7:4 steps [2] - 61:22, 65:21 still [16] - 27:21, 27:23, 28:3, 33:6, 44:15, 49:3, 50:7, 63:24, 70:13, 71:15, 76:19, 76:23, 91:15, 106:21, 110:5, 111:11 STIPULATED [3] - 4:6, 4:10, 4:14 stop [1] - 54:23 stopped [2] - 80:24, 93:10 store [1] - 37:18 storefronts [1] - 37:15 Street [21] - 3:18, 5:7, 7:19, 7:20, 7:22, 24:18, 24:21, 25:6, 28:17, 28:25, 33:9, 34:16, 36:25, 37:17,</p>	<p>37:23, 40:21, 42:15, 43:13, 54:24, 70:14, 111:12 street [22] - 18:24, 37:3, 37:10, 49:19, 71:18, 71:19, 71:22, 71:24, 72:4, 72:8, 72:10, 72:11, 72:15, 72:20, 72:21, 76:19, 77:5, 80:4, 80:22, 82:6, 86:14, 110:4 stuff [1] - 52:12 stumble [2] - 64:5, 89:8 stumbling [14] - 62:23, 63:21, 63:23, 64:7, 65:22, 65:23, 66:19, 67:2, 67:3, 67:4, 67:20, 68:14, 72:6 Stumbling [3] - 63:22, 67:11, 67:14 subject [2] - 10:5, 84:24 Subscribed [1] - 122:18 Subsequent [1] - 28:7 subsequently [2] - 30:18, 93:17 substance [2] - 53:25, 54:10 substantiated [4] - 9:9, 10:2, 118:22, 119:4 sudden [1] - 82:3 suggest [1] - 103:25 suing [1] - 114:4 sun [1] - 83:14 superior [1] - 16:22 supervising [1] - 108:6 suppose [8] - 40:4, 40:5, 40:9, 55:21, 75:22, 89:22, 114:17, 120:8 surprised [2] - 119:20, 119:23 surroundings [1] -</p>	<p>57:3 suspect [2] - 27:6, 108:12 suspects [1] - 39:5 SUV [2] - 42:23 sweep [1] - 75:18 swept [1] - 74:5 swivel [1] - 57:13 sworn [4] - 4:15, 4:17, 5:3, 124:12 Sylvite [1] - 1:24</p> <p style="text-align: center;">T</p> <p> tactically [1] - 79:13 take-down [4] - 75:24, 76:2, 77:14, 77:18 tall [12] - 38:7, 38:9, 38:13, 38:18, 39:20, 40:7, 40:8, 69:3, 69:4, 93:21, 109:12, 109:16 taller [6] - 39:24, 40:2, 40:10, 40:11, 40:13, 69:5 tapes [2] - 12:6, 12:10 taught [2] - 69:24, 75:23 teach [1] - 38:24 Tenth [36] - 24:18, 28:16, 28:23, 31:14, 33:10, 34:17, 37:6, 37:7, 37:8, 37:17, 37:23, 43:13, 43:18, 44:3, 46:7, 49:23, 56:19, 57:5, 57:9, 57:24, 60:25, 61:12, 61:14, 61:16, 61:23, 62:20, 63:3, 63:5, 65:2, 65:17, 70:13, 75:9, 77:5, 80:22, 110:4, 111:13 term [1] - 16:8 terms [6] - 49:23, 88:12, 109:5, 113:18, 115:9, 118:12 territory [1] - 7:16 testified [12] - 5:8, 10:18, 54:12, 55:24,</p>	<p>67:5, 109:13, 110:17, 111:25, 113:14, 117:6, 117:18, 120:10 testify [5] - 9:15, 10:13, 54:9, 55:12, 113:7 testifying [1] - 116:18 testimonies [2] - 12:12, 67:7 testimony [16] - 11:10, 11:11, 11:14, 11:20, 12:10, 12:14, 34:14, 51:12, 51:17, 52:16, 89:12, 103:12, 113:17, 122:9, 122:12, 124:14 THABO [3] - 1:5, 3:4, 3:9 Thabo [2] - 8:11, 94:4 THE [3] - 1:9, 2:7, 3:12 They've [1] - 22:4 third [1] - 106:8 Third [1] - 3:9 three [2] - 64:9, 104:3 tied [1] - 79:8 TMZ [1] - 11:25 today [15] - 8:4, 11:12, 12:15, 12:24, 52:9, 52:15, 52:20, 58:11, 66:11, 67:8, 67:15, 108:11, 112:25, 114:7, 116:19 took [6] - 25:25, 60:9, 65:20, 65:21, 76:18, 89:16 top [1] - 15:4 touch [1] - 82:25 touched [1] - 105:21 tour [2] - 15:24, 17:7 Towards [1] - 33:10 towards [5] - 54:22, 60:18, 87:16, 89:6, 107:15 TRACEY [1] - 3:15 traffic [3] - 43:18, 81:2, 81:4 Traffic [1] - 80:24 trained [4] - 38:25,</p>
---	--	--	--

39:10, 39:16, 58:22 training [1] - 39:19 transcript [3] - 122:9, 122:11, 124:12 translate [1] - 14:22 Transport [1] - 15:20 transported [1] - 90:12 TRIAL [1] - 1:14 trial [11] - 4:13, 11:19, 11:20, 40:7, 54:9, 55:11, 55:25, 89:13, 103:8, 107:8, 117:11 tried [3] - 26:2, 83:19, 85:19 trip [1] - 68:5 tripped [1] - 68:2 tripping [3] - 64:2, 67:21, 67:22 true [4] - 84:20, 122:11, 122:14, 124:13 try [3] - 57:12, 74:9, 83:25 Trying [1] - 105:9 trying [20] - 31:7, 32:7, 34:16, 36:2, 42:7, 42:21, 48:25, 64:18, 66:10, 67:18, 69:22, 70:22, 74:19, 79:14, 80:10, 82:11, 89:16, 110:18, 120:20, 120:21 turn [2] - 18:15, 60:17 turned [4] - 20:10, 68:19, 69:18, 89:24 TV [1] - 105:25 Two [6] - 12:5, 15:19, 17:11, 23:9, 27:3, 88:8 two [18] - 12:6, 13:12, 15:20, 17:14, 22:21, 23:13, 25:14, 25:15, 26:4, 26:13, 46:11, 48:3, 48:6, 64:8, 64:9, 68:16, 71:6, 88:8 Two-page [1] - 23:9 two-page [1] - 22:21 type [2] - 86:6, 89:8	typical [2] - 20:5, 98:22 typically [8] - 16:16, 18:5, 18:9, 18:16, 18:23, 21:23, 31:19, 70:2 Typically [2] - 18:2, 32:2	52:8, 52:12, 65:2, 72:5, 79:8, 83:14, 86:8, 98:15, 99:21, 107:6 ushering [1] - 60:14	91:22, 97:17 walked [5] - 44:3, 44:11, 61:5, 61:14, 65:18 Walking [2] - 31:12, 33:7 walking [9] - 33:6, 33:8, 34:15, 56:17, 57:25, 58:2, 58:6, 91:6, 99:20 wall [1] - 97:23 walls [1] - 97:16 warrants [1] - 20:4 watch [1] - 100:12 watched [3] - 46:9, 46:11, 73:17 watching [2] - 77:11, 100:18 water [2] - 7:20, 7:24 weapons [1] - 95:18 wear [2] - 19:3, 19:9 wearing [2] - 50:16, 50:19 Weather [1] - 15:9 Wednesday [2] - 15:5, 15:6 week [1] - 113:4 weeks [1] - 114:16 weight [1] - 39:7 West [4] - 5:7, 25:6, 33:9, 64:8 west [1] - 64:10 whatsoever [2] - 7:13, 87:9 WHEREOF [1] - 124:19 whole [3] - 45:7, 73:20, 87:14 width [2] - 71:18, 72:4 wise [1] - 109:25 witness [4] - 9:7, 10:6, 124:10, 124:14 WITNESS [2] - 123:4, 124:19 witnesses [1] - 39:5 woman [1] - 47:20 women [3] - 51:13,	
	U	V		
	unaware [2] - 86:8, 104:24 uncared [1] - 93:16 uncared-for [1] - 93:16 under [31] - 5:8, 15:19, 17:4, 17:12, 17:14, 17:15, 26:11, 26:23, 66:8, 66:10, 69:19, 70:3, 70:5, 70:8, 70:15, 72:24, 73:7, 86:22, 87:2, 88:8, 88:11, 88:19, 88:23, 90:22, 93:21, 94:15, 103:18, 105:12, 106:2, 106:6, 122:10 undercover [1] - 19:11 unfolding [1] - 26:8 unhappy [1] - 95:14 unhook [2] - 78:14, 79:16 uniform [3] - 18:23, 19:17, 19:20 uniformed [1] - 18:21 unit [9] - 6:6, 6:8, 6:11, 6:14, 15:16, 18:23, 21:5, 25:24, 34:5 UNITED [2] - 1:2, 2:1 unlawful [2] - 9:5, 117:23 unmarked [1] - 20:15 unnecessary [3] - 48:18, 48:21, 48:23 unquote [1] - 80:18 unrelated [1] - 25:25 Up [1] - 56:7 up [15] - 18:6, 22:16, 27:17, 34:16, 36:16,	vacate [2] - 31:14, 48:18 vehicle [3] - 20:13, 20:15, 43:5 venture [1] - 32:4 verbal [5] - 41:17, 42:10, 42:17, 44:18, 44:25 verbally [1] - 31:11 verbatim [2] - 28:11, 51:11 version [2] - 22:22, 23:17 vicinity [5] - 47:5, 65:16, 69:6, 77:13, 81:9 video [7] - 12:2, 33:15, 46:9, 46:12, 49:9, 73:17, 81:20 videos [3] - 12:13, 46:11, 77:11 videotapes [3] - 11:22, 11:24, 12:3 violations [1] - 16:5 vis [2] - 28:5 vis-a-vis [1] - 28:5 vision [1] - 64:13 voices [1] - 66:20		
		W		
		waist [1] - 98:12 wait [3] - 92:23, 93:6, 93:19 waiting [3] - 55:4, 55:7, 93:2 waived [1] - 4:9 walk [7] - 40:14, 61:4, 62:2, 74:19, 91:21,		

51:22, 81:15 word [15] - 6:23, 15:5, 16:2, 16:10, 16:11, 16:12, 36:7, 36:12, 36:13, 67:4, 67:10, 67:20, 79:25, 80:17, 82:15 worded [2] - 67:15, 67:16 words [31] - 17:11, 31:22, 31:23, 31:25, 32:6, 32:12, 36:4, 36:8, 40:19, 40:23, 41:2, 41:4, 51:20, 53:24, 54:2, 54:4, 54:10, 55:13, 55:16, 62:14, 62:17, 65:14, 80:2, 80:14, 80:19, 81:24, 94:18, 94:21, 101:4, 101:9, 106:6 world [1] - 84:21 wound [1] - 26:2 wounded [1] - 30:11 wounds [2] - 25:15, 26:14 wrist [2] - 19:8, 98:6 wrists [1] - 74:3 wrote [1] - 84:14	YouTube [1] - 11:25
	Z
	ZACHARY [1] - 3:17
Y	
year [1] - 39:22 year-and-a-half [1] - 39:22 years [1] - 58:19 yell [1] - 100:24 yelling [4] - 81:15, 81:24, 95:10, 101:2 YORK [7] - 1:3, 1:9, 2:2, 2:7, 122:4, 124:4, 124:5 York [28] - 1:18, 1:21, 1:24, 2:9, 2:10, 2:12, 2:13, 2:16, 3:5, 3:10, 3:14, 3:19, 5:4, 5:5, 5:7, 5:8, 5:16, 25:6, 25:7, 113:23, 122:22, 124:9	